HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

Standing Committee on Industry, Science and Technology

INDU • NUMBER 106 • 1st SESSION • 42nd PARLIAMENT

EVIDENCE

Monday, May 7, 2018

Chair

Mr. Dan Ruimy

Standing Committee on Industry, Science and Technology

Monday, May 7, 2018

● (1400)

[*English*]

The Chair (Mr. Dan Ruimy (Pitt Meadows—Maple Ridge, Lib.)): Welcome, everybody, to meeting number 106 of the Standing Committee on Industry, Science and Technology. Pursuant to the order of reference, we are continuing our study of the Copyright Act, a statutory review.

Today we have with us, from the Council of Atlantic University Libraries, Donna Bourne-Tyson, chair of the board of directors and university librarian from Dalhousie University. From the University of New Brunswick, we have H.E.A. Campbell, president and vice-chancellor. From Nimbus Publishing, we have Terrilee Bulger, co-owner. From the Association of Nova Scotia University Teachers, we have Teresa Workman, communications manager.

Thank you very much. You'll each have five to seven minutes to do your presentation, and then we'll go into questions from the members. With that, we are going to get started with the Council of Atlantic University Libraries.

Take it away.

Ms. Donna Bourne-Tyson (University Librarian, Dalhousie University, Chair of the Board of Directors, Council of Atlantic University Libraries): Thank you, Mr. Chair and committee members, for the invitation to appear today.

We acknowledge that we are in Mi'gma'gi, the traditional territory of the Mi'kmaq people.

My name is Donna Bourne-Tyson. I am a university librarian at Dalhousie University and chair of the Council of Atlantic University Libraries, or CAUL. Joining me today is Andrea Stewart, director of libraries and educational technology for the Nova Scotia Community College and the CAUL board representative for our standing committee on copyright.

CAUL is the collaborative partnership of 18 university and college libraries in Atlantic Canada serving a combined population of almost 97,000 students. CAUL member libraries spend over $27 million annually on print and electronic publications. As a regional consortium, we engage in the licensing of electronic resources—e-books, online journals, and streaming media—that complement content negotiated on a national level through the Canadian Research Knowledge Network.

Today we share with you a regional perspective, one that supports points previously articulated by our colleagues representing the national affiliated library, student, university, and college organizations.

CAUL believes that it's paramount to maintain expanded user rights for education. The educational use of material on the Internet, short excerpts of copyright-protected materials, and video content supports innovative and topical teaching and learning activities. We also agree with statements that have been made during this review related to technological protection measures for non-infringing purposes: protecting fair dealing exceptions from contract override; revisiting crown copyright; acknowledging and protecting indigenous knowledge; and, retaining the current life plus 50 years copyright term.

CAUL institutions value fair dealing and respect its limitations. When the six-factor fair dealing test is applied, as established in the landmark 2004 Supreme Court of Canada CCH decision, if it is determined that a work cannot be copied under the exception, we seek copyright clearance and pay royalties, either directly to the publisher or through a transactional licence.

Our members had serious concerns with the Access Copyright blanket licence model. The repertoire is limited and print-based. The agreement required institutions to pay for material they didn't use or need. Licences purchased through CRKN and CAUL resulted in duplicate payments to Access Copyright for use of the same copyright-protected material, and there was no option for transactional licences.

CAUL believes in a balanced approach for copyright. Since 2012, increased compliance mechanisms and policies have been deployed to ensure our communities are aware of their user rights and that they meet their responsibilities under the act and the fair dealing guidelines. CAUL members provide copyright education and outreach in areas such as fair dealing and alternative licensing options—such as Creative Commons—open educational resources, and the tri-agency open access policy. It is our experience that this has resulted in a much more informed faculty, staff, and student body.

The bulk of the material purchased by university and college libraries is academic in nature. Universities Canada has estimated that 92% of the content in libraries is produced by academic authors. Our libraries spend the bulk of our collections budgets on the content most in demand: namely, electronic journals, e-books, and streaming media licences.

The post-secondary libraries in Atlantic Canada are committed to supporting Canadian authors and creators. Our institutions purchase thousands of copies of books to support community reading initiatives, host local author readings, literary events, and authors in residence, and fund province-wide literacy programs. For preservation and access purposes, our libraries are print repositories for all of the literature published in the Atlantic provinces and by the small presses across Canada.

Finally, for the committee's consideration, we would like to raise issues related to new technologies. There is a growing demand by researchers to create large new datasets derived from the mining of existing digital content. This text- and data-mining use is not acknowledged in the act, and use is currently secured with licences. Rights granted in the Copyright Act must be flexible enough to respond to emerging technology. For example, implementation of a blockchain could disrupt user access rights. It is critical that users' rights not be undermined or overridden by contracts, digital locks, or other technological innovations.

In conclusion, CAUL endorses a balanced approach for copyright, one which respects creators and the rights of users under the educational fair dealing exceptions in the Copyright Act. As a long-established right for all Canadians, fair dealing for education helps support our faculty to teach and conduct research and our students to learn.

● (1405)

CAUL strongly encourages the committee to recommend that user rates remain in the act as they are now written, and that tariffs remain optional, allowing educational institutions the independence to decide how best to invest in resources to support our learning communities.

Thank you for the opportunity to speak to you today. We welcome your questions.

The Chair: That wasn't so bad. It was five minutes and 25 seconds. Thank you very much.

We're going to move on the the University of New Brunswick. Mr. Campbell, you have up to seven minutes.

Dr. H.E.A. (Eddy) Campbell (President and Vice-Chancellor, University of New Brunswick): I, too, would like to thank the Chair and members of the committee for the invitation to appear in front of you here today.

My name is Eddy Campbell. I'm the president and vice-chancellor of the University of New Brunswick. With today is Lesley Balcom, who is the dean of our libraries at the University of New Brunswick. I'll say just a few words about us to begin.

We are the province's largest university, doing 75% of all the publicly funded research done in New Brunswick. We help drive the New Brunswick economy. We contribute $1.2 billion per year to the provincial economy, which is just over 5% of the GDP. Our emphasis on entrepreneurship and innovation has helped launch more than 100 start-ups in the province since 2010. The vast majority of those have been led by our students, who we encourage to participate in that activity.

I am here today, as my colleague Donna has already suggested, in support of the statements you have heard already from Universities Canada, the Canadian Association of Research Libraries, the Canadian Alliance of Student Associations, and others. We are speaking in favour of the preservation of fair dealing for education. I am here because this issue is very important to our university. I thought it might be interesting to you—and relevant to your work—to hear from a particular university about the kinds of activities that we have undertaken in order to be compliant with the legislation.

We are committed to the responsible sharing of copyrighted materials. Our system of compliance is led by our UNB libraries copyright office, which was created in 2009. The focus of this education is fair dealing assessment and transactional purchasing. Our full-time copyright officer, Joshua Dickison, is in the audience over here behind us. His job is to work directly with our faculty to build understanding of copyright, and to promote a culture of respectful use. The bedrock of this relationship is UNB's course reserves delivery system. This is embedded, in turn, in our learning management system, which ensures the responsible sharing of materials. It operates at the course section level, restricting access to materials by term and by course registrant. One of the important things it allows us to do is identify material that we should purchase through targeted transactional licences.

Here are some of the numbers that we have to offer. There are 1,000 courses vetted through the system. We have 6,000 items placed on reserve each year. There are about 1,000 scanned documents that will be reviewed for whether or not they're fair dealing, or whether or not we require a transactional licence to use them. We have a budget of some $5,000 a year to purchase transactional licences. When we discover that material is going to be used more than once, we add it to our collection for course reserve. About $7,000 a year is processed in that particular way. The total cost of copyright support at our university is some $200,000 a year.

Like all of the universities in the country—ours, in particular—we feel we have a strong responsibility to the creative community. We have a significant creative community at the university, and we support a significant creative community within the province. We have a creative writing program, for example, that ranges from the undergraduate to the Ph.D. level. Almost all of these people are published in some form or other during the course of their careers at the university. We also support the local literary community in New Brunswick. As the University of New Brunswick, we have a responsibility to purchase multiple copies of materials that New Brunswick authors are producing. We also have a responsibility to celebrate and promote their accomplishments. We do this on a regular basis. It is very important to us.

Our investment in library resources is increasing every year. We spent $3.5 million on acquisitions in 2009. Today that's $5.2 million. Although we have made every effort, we have lost access to some very valuable resources over that particular time. We view the pressure on library spending to be very intense.

● (1410)

In conclusion, I'd just like to say that we believe we are responsible. We pay for what we use. We actively support our creative community. We invest heavily in ensuring that our students have access to the materials they need to be the leaders of tomorrow. Fair dealing for education is an important part of that landscape.

Thank you.

The Chair: Thank you very much.

We will now go to Nimbus Publishing.

Ms. Bulger, you have up to seven minutes.

Ms. Terrilee Bulger (Co-owner, Nimbus Publishing): Thank you.

First, I too would like to acknowledge that we're meeting on the unceded lands of the territory of the Mi'kmaq, in Mi'gma'gi.

I'm the co-owner of Nimbus Publishing, the largest English-language publisher east of Toronto. We publish approximately 50 new titles a year. We focus mainly on books that are for and about Atlantic Canadians.

I'd like to begin by stating that Canadian publishers have been significantly impacted by the 2012 changes to the Copyright Act—namely, fair dealing. In a recent study completed by PricewaterhouseCoopers, it was found that the royalties received have decreased by almost 90% since 2012, representing a loss of $30 million per year in licensing revenue for Canadian publishers. As I'm sure you're aware, the impact of this has been proven in the Federal Court of Canada, which recently found that York University's copying policies have caused economic harm to the sector. These policies are identical to those adopted across the education sector. However, the court found that the policies are arbitrary and unfair, and have resulted in a wealth transfer from the creators to the educational institutions. These policies have also led to systemic copying of copyright-protected works.

I've heard it stated at some of these that Canadian publishers have a healthy operating margin. While that might be true, the reality is that the operating revenue of Canadian book publishers is down. According to Stats Canada, the book publishing industry's operating revenue was down by 0.6% from 2014 to 2016. Therefore, in order to achieve these profit margins, operating expenses have had to decrease. This means that salaries, wages, commissions, and benefits have decreased as well, by $7.4 million, or 2%. As I'm sure you can imagine, this represents a significant decrease in jobs for the creative economy.

There is also a direct correlation between sales and royalties paid to authors. A decrease in sales for a publisher means that less money goes into the pockets of our Canadian authors. Speaking from our own experience, last year we received a licensing cheque of approximately $3,000 from Access Copyright. As a publisher, we've published over 1,200 books in the 40 years we've been publishing. For a publisher like us, we should be receiving about eight to ten times that amount. Unless we make up that amount by selling to other markets, at least one job loss is necessary. I can't even imagine how this would be impacting Canadian academic publishers—surely much more.

Publishers like us have been able to increase earnings by doing distribution for other publishers. In 2016 it was found that 52% of book companies were involved in publishing only. This is a decrease of 5% from the previous year. The number of publishers who both publish and distribute for other publishers increased by 7% since last year. These stats prove that it's necessary for publishers to diversify their revenue. However, doing so takes staff time away from producing and selling our own in-house books. At the same time, it increases the competition for our own books.

Stats Canada also reports that export sales have increased by 11.8% since 2014. While this might sound like a positive thing, it means that publishers have had to adapt their book publishing programs in order to sell to markets outside of Canada. Regionally specific books won't sell to export markets. Therefore, books that are uniquely Canadian or reflect our Canadian heritage and culture are less likely to be produced.

Book publishing in Canada is not an overly lucrative business—trust me. We are a large country with a large population, and there are huge differences between our regions. For example, publishing a book on the Mi'kmaq heritage is difficult, as the market is very small. Conversely, as a regional publisher, shipping books across the country has its own problems. We lose money on every small order we ship to British Columbia, for example. We need our educational institutions to support our work if we are to continue to do the kind of publishing that preserves our Canadian heritage.

Collective licensing is good for publishers, writers, students, and educators. Selling small, individual licences is time-consuming for all involved. It requires a lot of back-and-forth. Having Access Copyright handle this administration is beneficial to publishers, authors, and those who access the content.

● (1415)

We believe that is an effective and affordable way to ensure learners have access to the material they require, and for creators and publishers to receive compensation for that material. Through collective licensing, the highest fee is $26 per student. I believe for that fee access to quality Canadian content is a bargain. Canadian educators and students currently benefit from a wide variety of Canadian-specific materials that meet curriculum objectives and support academic achievement.

We believe that the authors of those books should be able to make a living and continue to write them. We should all be in this together.

Thank you.

The Chair: Thank you very much.

Finally, from the Association of Nova Scotia University Teachers, we have Ms. Workman.

Ms. Teresa Workman (Communications Manager, Association of Nova Scotia University Teachers): Good afternoon, Mr. Chair and members of the committee.

My name is Teresa Workman and I'm here on behalf of the Association of Nova Scotia University Teachers, ANSUT for short.

We appreciate the effort you are making to hear from people all across Canada, and thank you for the invitation to appear today. I welcome you to Halifax.

ANSUT represents over 1,400 full-time faculty, librarians, and contract academic staff at eight universities across Nova Scotia. Our mission is to bring their voices forward in support of post-secondary education.

With respect to copyright, a big part of ANSUT members' jobs as teachers and librarians is to gather and share knowledge with students. Another part of our members' jobs is to write. In this capacity, university faculty collectively creates thousands of articles, books, manuals, and other written works each year. These two roles, providing access to the works of others, but also creating works ourselves, means that copyright is an always-present factor in our working lives, and one that must balance the interests of both users and creators of work.

This afternoon I wish to bring three issues to your attention in this regard. The first is fair dealing. As you know and have heard from other speakers, it provides a limited right to copy literary and artistic works without permission from, or payment to, the owner of the work. In a series of decisions dating back to 2004, the Supreme Court of Canada has repeatedly reaffirmed the central importance of fair dealing to the structure of the Copyright Act and ruled it be given a large and liberal interpretation. In 2012, the federal Parliament codified existing educational fair dealing jurisprudence and practice into the Copyright Act.

To ensure the success of the law, the education community has created guidelines to assist teachers, researchers, and students with its implementation. Within this framework, fair dealing is working, providing librarians and professors with an important additional tool to make learning resources available to students and each other for teaching and research.

As I'm sure you are aware, not everyone has been happy with fair dealing, and you have doubtless heard critiques of it. One of the critiques is that it has led to rampant free copying and a refusal to pay licence fees. This is incorrect. Fair dealing is just a small part of the way knowledge is exchanged in the post-secondary education environment, and most of the material subject to fair dealing has been produced within the academic community to start with, for example, journal articles. Moreover, with respect to money changing hands, the education community continues to pay as much as, or more than, it ever has to the private sector for licences and other purchases of content.

The Canadian Research Knowledge Network, CRKN, is one place a lot of money is going. CRKN is a partnership of Canadian universities that collectively licenses research and teaching resources for universities across Canada. Those licences alone cost $120 million last year. The total expenditure across Canada is upwards of $300 million each year.

To conclude on this point, fair dealing makes a small but important contribution to teaching, learning, and research, and it has not led to an overall drop in expenditures on content. Please ensure that it continues to benefit Canadians.

The second issue concerns circumventing digital locks for non-infringing purposes. Many content owners attach digital locks to their content to prevent illegal copying. The Copyright Act currently makes it illegal to circumvent these protections. The difficulty with prohibiting circumvention is that while digital locks can prevent illegal copying, they can also prevent the exercise of fundamental rights such as fair dealing, accessing work from the public domain, archival presentation, and library lending. Fortunately there is a simple solution to this problem: amend the Copyright Act to allow the use, manufacture, or importation of devices capable of circumventing digital locks in cases where the circumvention is carried out for non-infringing purposes.

The final issue I bring to you is copyright of indigenous work. The Truth and Reconciliation Commission of Canada has called upon Canadians to engage with indigenous communities and be leaders in reconciliation. The review of the Copyright Act presents an opportunity to do this by recognizing the unique relationship between indigenous communities and the creative works they produce, and the conflict between western and indigenous notions of intellectual property. We support all efforts the committee can make, in consultation with first nations, Inuit, and Métis organizations, to advance, explore, and develop specific legal frameworks to protect the knowledge and culture of indigenous communities.

Thank you again for the invitation to appear today.

● (1420)

The Chair: Thank you very much to all of our panellists.

We're going to jump right into questions.

Mr. Jowhari, you have seven minutes.

Mr. Majid Jowhari (Richmond Hill, Lib.): Thank you to all the presenters. It is great feedback to us to start.

Before I start asking a line of questions, I just want to quickly make sure that I understand where your position is vis-à-vis copyright and fair dealing.

May I start with Mr. Campbell? Can you tell me if you are supporting fair dealing, or are you supporting—

Dr. H.E.A. (Eddy) Campbell: We are in support of fair dealing.

Mr. Majid Jowhari: You mean as is; do not change. Okay.

Ms. Bulger.

Ms. Terrilee Bulger: We are not in support of fair dealing.

Mr. Majid Jowhari: Okay, that's fair enough.

Teresa.

Ms. Teresa Workman: We are in support of fair dealing.

Mr. Majid Jowhari: That's with a minor amendment, correct?

Donna.

Ms. Donna Bourne-Tyson: We are in support of fair dealing, with the additional request that contract overriding not be possible.

Mr. Majid Jowhari: Okay.

Let me go back and start with Donna.

Can you tell me what the overall spend was on copyright material as far as the library at Dalhousie is concerned?

Ms. Donna Bourne-Tyson: I would have to look up that figure and provide it to you later.

We spend over $7 million a year on library acquisitions.

Mr. Majid Jowhari: Okay.

Based on what you shared with us, about 92% of that is going to the authors who are developing those materials, or where is that $7 million going, roughly? Let's assume it's $7 million.

Ms. Donna Bourne-Tyson: Of the $7 million, we spend over 90% on licensed material, mostly through CRKN, the Canadian Research Knowledge Network, and that is primarily the large five publishers—Oxford, Cambridge, Wiley, Springer, and SAGE—and then the remaining 10% we spend on books and small press journals, things that can't be licensed electronically.

Mr. Majid Jowhari: I'm just going to quickly jump back to Ms. Bulger.

You mentioned, as a Canadian publisher that is focused on Canadian heritage material, that you're actually seeing a decrease, and you're a publisher. Can you help me balance between a lot of money, $7 million, going—

● (1425)

Ms. Terrilee Bulger: Yes, I can't balance that. As I said, our cheque from Access Copyright this year was $3,000. We receive almost no orders directly from any university. We don't receive any transactional licensing directly from the universities, so I don't.... We're an Atlantic Canadian publisher, and maybe they're not buying Atlantic Canadian works. I'm not sure.

Mr. Majid Jowhari: Okay.

Let me go to Mr. Campbell. You also talked about the jump from $3.5 million to $5 million spent on copyright material. Can you tell me where the majority of this amount is going?

Dr. H.E.A. (Eddy) Campbell: I'll defer to my colleague, Lesley.

Ms. Lesley Balcom (Dean, Librairies, University of New Brunswick): My answer is very similar to Donna's, from Dalhousie, and similar to universities across the country. We're paying the vast majority of the millions of resources that we spend on library acquisitions to licensed electronic products, academic publishing. These are materials that are authored from within our institutions and across the world as well. They're international publishers. They are packages. The very significantly sized ones we buy, like others, through CRKN, and you heard from—

Mr. Majid Jowhari: Would you agree with Donna that it is where those five publishers are getting the majority of the funds associated with the copyright?

Ms. Lesley Balcom: That's where most of our money goes. At UNB we spend about half a million dollars on print resources in addition to our electronic licensed products.

Mr. Majid Jowhari: Going back to Mr. Campbell, aside from the investment on the copyright and fair dealing, you also talked about the compliance and the support for the creative community. With the compliance, I think I understood, but I want to go back to the support for the creative community. What is it exactly that the universities are doing to support the creative communities?

Dr. H.E.A. (Eddy) Campbell: At the University of New Brunswick, we believe we have an obligation to acquire materials that are created by authors of New Brunswick origin. We buy copies to maintain in our library. We are in some sense the home of the literary community in New Brunswick. We also celebrate the creative community by holding book readings and inviting authors from all across the country to read on our campuses. Those events at both of them, in Saint John and in Fredericton, are well attended. We often have a writer in residence associated with the creative writing program that we have.

Lesley, am I omitting any details?

Ms. Lesley Balcom: I'll add that we buy the papers of regional authors to add to our archives and special collections. At UNB we have the only collection of Atlantic Canadian children's literature.

Mr. Majid Jowhari: So that puts real money back into the pocket of the creators, I would say.

Ms. Lesley Balcom: Absolutely.

We are very much in support of our creators. I think an important point we'd like to be clear on is that we don't speak out of a lack of support for our regional creators; it's about the use of educational fair dealing to be the tool to do that. Many of the activities at our institution are in support of our creators. We would certainly encourage the government to engage in programs to provide additional support. Our experience is with universities, with the material that our constituency needs. Educational fair dealing is an important tool.

Mr. Majid Jowhari: Mr. Chair, how much time do I have?

The Chair: None. That was exactly seven minutes.

We're going to move on to Mr. Jeneroux.

You have seven minutes.

Mr. Matt Jeneroux (Edmonton Riverbend, CPC): Thank you, everybody, for being here. Some of you have travelled as well, so thank you for doing that.

I want to start with you, Ms. Bulger, if you don't mind.

You made a few comments in your presentation that I'd like to get to. I read some of the background information on Nimbus Publishing. You publish approximately 35 to 40 books a year, though that grew to 55 in 2017. That year you were named Canada's fastest-growing independent publisher by *Publishers Weekly* after an increase in revenue of 31% from 2015. You commented that diversification and distribution for other publishers were big parts of that.

Can you walk me through what that means and what that looks like? You made reference to some international markets and American markets. You're growing fast, but you're saying that the 2012 Copyright Modernization Act has hurt that. I want to get a better sense of what that might mean.

● (1430)

Ms. Terrilee Bulger: That's my company's experience though I was talking about publishing in general too with the stats earlier. We're growing fast mainly due to grants from the provincial government, which we didn't have access to before. Those allow us to do a lot more. As well as our distributed clients, we're able to do more as well. We do distribution for a lot of other publishers in Canada. As they grow, we grow too, because as they do more books, we do more books. If we take on new distributed clients, then our revenues grow as well.

Does that make sense?

Mr. Matt Jeneroux: I think we're getting it.

Has the Government of Nova Scotia created new grants since 2012? Was that in response to the Copyright Modernization Act?

Ms. Terrilee Bulger: Yes, they did. That was two years ago now. That was a response to the focus on the creative economy. The publishing investment was very small here before, and it actually just brought the level of our investment up to what they offer in other provinces. It meant a good investment for us, because we had been publishing for 40 years, so we were significantly impacted by that.

Mr. Matt Jeneroux: I think you also mentioned that you'd like educational institutions to further support your work. Is that potentially something else that you...kind of towards the end of your presentation?

Ms. Terrilee Bulger: Yes. For example, they mentioned they buy a copy of every children's book for the library, but that doesn't mean people can copy those books without paying collective licensing. They have a book in the library, it could be there forever and many people could have read or copied that book and they haven't paid to use that content.

Purchasing one book for a library doesn't result in a lot of income for the creators, so that's what the collective licensing—

Mr. Matt Jeneroux: Fair dealing to you doesn't address that larger issue of students going to libraries and photocopying an entire book?

Ms. Terrilee Bulger: That's part of it, yes, for sure. Anybody can copy right now. They're not paying for the collective licensing, and people can copy whatever they want, so no money is going back to the creators.

Mr. Matt Jeneroux: Do we have evidence that students are doing that?

Ms. Terrilee Bulger: I think it certainly was proven in the York University case with the Federal Court of Canada that, yes, that's definitely happening. We also hear a lot of hearsay from our authors. For example, an author might get invited into a classroom, as they were saying, to do a reading or a speaking engagement, and then they get there and the students are sitting there with a photocopy of their book. All the students are using and working with that book, but nobody has paid for the right—

Mr. Matt Jeneroux: Even a 1,000-page book, they'd have a photocopy of the whole book?

Ms. Terrilee Bulger: In some cases, we've heard that, yes. One of my authors sent me an email in a panic; their whole book was up on a teacher's website asking the students to read the book.

They could have bought e-pubs from us. We do digital versions of all our books. There could have been some sort of licensing arrangement there. Instead, teachers are copying whole books, scanning them, giving them to—

Mr. Matt Jeneroux: You'd have recourse through the courts, though, if that entire book is up on the website, would you not?

Ms. Terrilee Bulger: Yes, when you can find it. I think there's an attitude that it's educational, so we can use it.

● (1435)

Mr. Matt Jeneroux: I only have a minute and a half left, so I will move to President Campbell.

Great to have you here, and thank you for representing the universities as well. Do you want to talk about the system that you guys have? You opted out of the reprographic licence agreement. You chose not to sign that agreement. What is that? You decided, as a number of universities have, to opt out of the access copyright.

Dr. H.E.A. (Eddy) Campbell: Yes, we did opt out at the time we created the copyright office back in 2009. We felt we could manage a system that would be fair to the creative community, respect the legislation, the definition of fair dealing that is embodied in the current act, so we created that system back at that time.

I believe we do quite a good job at having a look at what people are doing. There's an education component where we try to ensure we are in compliance with the legislation as we understand it. We have no intention of doing anything else.

Lesley, do you have anything to add?

Ms. Lesley Balcom: One of the aspects we're very pleased about that we're undertaking at the University of New Brunswick is our course reserve system that is integrated with our copyright office. For example, UNB online, our online course offerings, are all required to go through the course reserve system to ensure the course materials are vetted through our copyright service.

Our copyright officer spends a great deal of his time on education with in-person sessions, developing materials to be used online, and he spends much of his time just being available for questions. We made the decision to embark on the development of a culture of copyright awareness, and much of what we do is in support of having a teaching community that understands and respects the limitations of copyright.

When I'm with Josh Dickison a number of people know him and say hello, and by the by ask him questions about their course materials. I feel strongly that we've been successful in that regard.

The Chair: Thank you.

We're going to move on. Mr. Masse, you have seven minutes.

Mr. Brian Masse (Windsor West, NDP): Thank you for being here today.

What we are finding—not dissimilar to the past—is that there are many stories of people infringing on copyright material yet few specifics are provided for it. There's enough of a complaint that's consistent that would indicate that something's going on related to this, but at the same time, we're really not provided with a lot of evidence for that. I've been through copyright a few times and this seems to be a recurring trend.

Maybe I'll start with the universities. What happens to a teacher, either tenured or non-tenured, who has been found violating copyright? What is the punishment for that? Do you have any examples of that taking place internally, if you have a robust system of copyright protection? Do you have any examples, and what happened in those circumstances?

Ms. Lesley Balcom: Our examples are based on instructors forwarding their proposed readings to us. We're able to say to them, "Before that goes forward, we're going to need to find a transactional licence for that", or "If you're interested in linking to that title, we'll buy it in e-book form."

Our experience is that we are able, through our intervention, to ensure that those situations don't happen. I'm certainly not going to sit here and say they never could, or they absolutely never do, but I don't believe that educational fair dealing is what is the....

● (1440)

Mr. Brian Masse: If you catch somebody, though, a professor or instructor, and they're violating the Copyright Act, what is the punishment at your university? What are the consequences for such an activity? Do you have a measurement or do you leave it to the court system? Ms. Bulger provided an example with regard to material being posted online, and I'll go to that in a minute, but what would be the result of that? What's your policy to protect the individual?

Ms. Lesley Balcom: From our perspective, the policy would be to ensure that the material is replaced with an appropriate version of it. I can't say what would happen because I haven't encountered a full item being copied and made available to students at UNB.

Mr. Brian Masse: You don't have a specific policy. You haven't had a circumstance, but you don't have a policy if you have somebody who is an instructor, either tenured or not, who violates the copyright policies of Canada. There's no specific recourse in terms of dismissal, reparation, or reprimand. It's just on a case-by-case basis.

Ms. Lesley Balcom: From the library's point of view, our job is not to do that. Our job is to ensure that it doesn't happen and we do a good job of it, but I will defer to my president.

Dr. H.E.A. (Eddy) Campbell: Yes, I would say we would view that as an opportunity for education rather than punishment. The problem is we haven't been exposed to such accusations. I imagine if the violation were serious enough, we would want to make reparation, effect a transactional licence after the fact, compensate the person whose work had been taken, outside of our existing licences for our use of that material.

Mr. Brian Masse: Would it be a case-by-case situation? I'm trying to get a feel here in terms of... because there's an accusation. I'll leave it at that for now, but it sounds to me like you don't have a specific recourse. It would be a case-by-case situation.

It's a simple thing. If you're working for a university and you photocopy a book and put it up on the Internet to share with your students, and you're caught doing that, what would be the result? Would it be case by case or would there be a specific action, like dismissal? That's what I'm looking for, what would happen to that person.

Dr. H.E.A. (Eddy) Campbell: Let me make it clear. I don't view that as a dismissible offence. I view that as an opportunity to educate a particular faculty member as to their responsibilities to obey the legislation, and I would also point out that it's extremely important to us that we are in compliance. That's why we've made all these efforts to ensure that we are.

You, I think, have pointed to a hole in our policy, a policy gap that we should address—when we do find people in violation, what will we do?

Mr. Brian Masse: I'm not being critical either way. It might even be that's the best way to deal with it. I'm just trying to figure out what exactly happens when these situations arise.

Ms. Bulger, with that case that you gave as an example, what happened? Did your company or the association take that up? What university was that?

Ms. Terrilee Bulger: It wasn't actually a university. It was the Nova Scotia Department of Education and Early Childhood Development, and so I brought it to their attention and it was removed.

Now I don't know what happened. I never went and asked what happened to the teacher who did that, but it is theft, so you would think there would be some sort of repercussion.

Mr. Brian Masse: I'm a big fan of the carrot-and-stick approach if you want to encourage things to happen. But if you're not going to play by the rules, then there are consequences for that.

Maybe you can provide the committee with details, but I hear a lot of these hypothetical or potential situations. If you would like to share the details of the case you mentioned, it would be interesting, because we don't get a lot of these coming forward to us. We just know somebody claims that they copyrighted, or they took something and photocopied it, or this or that. I haven't received a lot of evidence over the years of it taking place

Ms. Terrilee Bulger: I don't know what else you need. I could send you the emails that went back and forth perhaps.

Mr. Brian Masse: Or just if there was a case example that led to something that was public and is not private. That would be helpful for us.

Maybe I'll let you guys have a chance to—

Ms. Terrilee Bulger: But can I also just check...there is quite a bit of evidence of that in the Access Copyright v. York University case —

● (1445)

Mr. Brian Masse: Yes, I know that the one case is going on, but it's just the one case. It's the most recent.

Ms. Terrilee Bulger: There is another case in Quebec as well at Laval.

Mr. Brian Masse: Yes.

Ms. Donna Bourne-Tyson: So those two cases have not proven that there was a—

Mr. Brian Masse: I know.

Ms. Donna Bourne-Tyson: Yes. At Dalhousie, we have always said that it's a shared responsibility between faculty and administration, and while the university would be the named respondent if there was a court case, we have made it clear that that is a shared responsibility with faculty. Disciplinary proceedings are long and well-governed in a university, so it wouldn't by any means be grounds for dismissal but it would be an action with consequences.

We found that faculty are very interested in being in compliance and they ask instead of just going and putting something up. We did an audit of our learning management system before we left the Access Copyright licence with our university auditor leading it, and it was a clean audit. So people do want to comply.

The Chair: Thank you very much. You're over time. We'll get back to you.

Ms. Ng, you have seven minutes.

Ms. Mary Ng (Markham—Thornhill, Lib.): Thank you very much, everybody, for joining us today. We always hear good and learned testimony from everyone on all sides of this issue.

I'm going to pick up on that line of questioning but I want to start with President Campbell and the case in UNB. You had talked about how you're seeing an increased number of young people, students, who are creating start-ups and therefore contributing to the economy. At Dalhousie, you were talking about a greater need for datasets. If I extrapolate from that, it means that you have young people and students who in the course of their studies or their research or their entrepreneurship are taking from what they learn and they will create something else.

My question is for both institutions. Do you think that the regime we have now in the Copyright Act will suffice for that kind of creation?

Ms. Donna Bourne-Tyson: I have a few thoughts and then I'm going to involve my colleague from the Nova Scotia Community College here.

There's some user-generated content allowed now under fair dealing, but in the case of data mining, it's often not even the content as content that is required, necessarily. They just need massive amounts of data. So it's not really even using the content in a way... it's not copying the content for the sake of the content. They just want it to aggregate a lot of data, and then that is not really considered in the act yet. It's a new use that hasn't been really adequately described.

Ms. Mary Ng: Do you think we should be considering that, in some form?

Ms. Donna Bourne-Tyson: Yes, that was one of our last two recommendations in our brief about new technological needs, and data mining and text mining should be considered under fair dealing, we believe.

Ms. Andrea Stewart (Board of Directors Liaison to the Copyright Committee and Director of Libraries and Educational Technology, Council of Atlantic University Libraries): I think also from the perspective of technology, there's the digital lock situation. It has been brought up in other hearings as well. One piece that is particularly concerning is it's not permissible to break a digital lock to put closed captions, for instance, on content. From an accessibility requirement, this is challenging for our students and for us to be able to meet accommodations for students that reduce the barriers to education for them.

We have accessibility legislation in provinces now—Ontario, Manitoba, and Nova Scotia, most recently. That's going to be an essential piece for us, from a technology perspective, to take into account in the Copyright Act and to be flexible enough to deal with technology as it evolves and expands.

Ms. Mary Ng: For the publishers, do you have a perspective about this at all?

Ms. Terrilee Bulger: Do you mean data mining and whether it should be under fair dealing? We're against fair dealing. That would be true for that as well.

Ms. Mary Ng: Okay.

Dr. H.E.A. (Eddy) Campbell: From our perspective, the library has been in conversations with those areas of the university where entrepreneurship and innovation are most active by way of servicing them from a library point of view. I don't know that we run into issues of copyright there, Lesley. I know we have a vast array of information and a number of databases we believe would be very useful to people wishing to establish new companies, and a vast array of information that is relevant to that exercise.

● (1450)

Ms. Lesley Balcom: I think all I would add is we know that student demand for a need for data is increasing. If the committee is looking at preparing for the five years coming up, it is an opportunity to be addressing what we certainly see as information needs on the horizon.

Ms. Mary Ng: Thank you.

My second question has to do with acquisition of Canadian content produced by Canadian authors and creators. Has fair dealing changed your acquisition at the institutions and the colleges? Are we not buying as much? Are we not acquiring as much? Do you know?

Ms. Lesley Balcom: I think one of the things that's really important to be aware of is that most of the creators whose work we purchase are working within the academic context, so we're buying their works as part of our journal packages, as part of our e-book packages. Most of our creators—and many of them are our colleagues at the University of New Brunswick and across the region—are publishing in the journal, for example, that best suits their discipline.

We are acquiring their material, but we're acquiring it in a disciplinary context. We certainly continue to be committed to buying the works of Canadian publishers. I know when CRKN presented in Ottawa there were references to specific Canadian packages. We acquire those at UNB and other institutions within the region. We are active supporters of our regional and local publishers as libraries.

Ms. Donna Bourne-Tyson: To augment what Lesley said, in addition to what we purchase through the large licences at Dalhousie, for instance, we have the Canadian small press collection. We attempt to purchase everything that is published by a small press in Canada. We purchase two copies of everything to keep in perpetuity and make available. We have a collection of over 25,000 small press books now.

When you think about a university, Dalhousie or larger, we have 12 faculties. Certainly the faculties that do humanities education—English, history, law sometimes—would make use of small press materials, but there are other faculties like engineering, medicine, computer science where that's not the sort of educational material they require. Fair dealing does come into it because they are not using that type of Canadian content.

Ms. Mary Ng: Thank you.

The Chair: We're going to move to Mr. Lloyd. You have five minutes, please.

Mr. Dane Lloyd (Sturgeon River—Parkland, CPC): Thank you, Mr. Chair, and thank you, everyone, for coming today.

My first line of questioning will be for Ms. Bourne-Tyson at the libraries. I'm sure the publishers appreciate the work the libraries do, especially when they purchase copies. I think that's an essential part of the market.

In our current age, we're not back in the day when photocopiers were thousands of dollars, and only public institutions could afford them and monitor them. We have personal scanners, we have digital scanners, personal photocopiers, and we know these things are readily acceptable.

How are you able as an institution to regulate copyright infringement? For example, if I were to go to your library, and take a book out, and go to my own home, and scan a copy or photocopy something digitally or in hard copy, would you be able to prevent me from infringing on copyright?

Ms. Donna Bourne-Tyson: No. With print materials, if somebody were to take it out of the library and go to another location and scan it, we wouldn't know.

Our print circulation, for instance, is declining fairly rapidly. Most students really do want born-digital materials now, in very short snippets, too. Sometimes I think that in the future, fair dealing won't be an issue, because nobody wants more than 1% of anything.

Mr. Dane Lloyd: Yes, I understand.

Ms. Donna Bourne-Tyson: They don't want to read anything longer than three paragraphs.

Mr. Dane Lloyd: Also, not just talking about print, though, you have snipping tools on computers, where you're able to take a screen shot of digital content and you could mass produce entire digital works. Would you be able to regulate against that activity?

● (1455)

Ms. Donna Bourne-Tyson: What we do is educate to prevent that sort of material, and—

Mr. Dane Lloyd: —which is important, I would agree. Sorry to cut you off. It's important to educate.

However, you agree that there is no way you can actually monitor and regulate copyright infringement. I guess my follow-up question is this. To ensure that authors and publishers are compensated for their work, even for your safety legally, wouldn't collective licensing be the best means to protect institutions such as yours from accusations of being conduits for copyright infringement, and also to compensate creators, to ensure that they're fairly compensated for their works?

Ms. Donna Bourne-Tyson: If we had any evidence of this sort of illegal photocopying going on, I think we'd be more concerned.

We're finding that, with the transactional licences where we pay for what we use, it's really a more equitable way for us to manage our money. Libraries never have enough money to purchase everything people want, and that's when we're deliberately going out and buying what people request. To pay a blanket licence for something people may or may not ever even look at, never mind copy, doesn't seem to be the best use of our funds.

I'd like to see if my colleague has something to say here. She's the copyright expert.

Mr. Dane Lloyd: One thing you mentioned is that you don't have the capacity to monitor whether people are infringing on copyright, so you can't really say, "Well, we don't know if this is happening; therefore, we shouldn't do anything about it." If you can't monitor it, how can you say that this isn't happening? The evidence we're hearing from the publishers is that this is happening.

Ms. Donna Bourne-Tyson: That was one case in a primary school, not a university.

In favour of digital locks, this is why there are TPMs, to prevent some of that reproducing.

Mr. Dane Lloyd: This is also a very interesting segue into my next line of questioning.

Several people, I believe including you and some other witnesses here, have called for TPM circumvention technology to be brought into Canada, and for TPMs to be able to.... I understand, fairly, that you're asking for it to be used only in cases where it should be legal. But if you admit that you can't currently regulate or even monitor copyright infringement and compliance with print or digital, aren't you taking away the final line of protection for creators to protect any of their work?

Ms. Donna Bourne-Tyson: Is that a rhetorical question?

Mr. Dane Lloyd: If they don't have TPMs and you're not able to monitor this, then really they have no protection, wouldn't you say?

Ms. Donna Bourne-Tyson: Yes, that's a valid point, but we do not see any evidence of that sort of illegal reproduction. The only time young people are interested in even reproducing material like that is often when they want to create their own content, which is allowed if they're doing it in small amounts.

Mr. Dane Lloyd: For sure.

Let's say you have 100% of a work. In your case, I believe they allow people to take 10% of a work. Wouldn't you agree that in a well-researched work—even in an academic environment—10% of a work could pose a very significant part, the bulk of the research work that somebody is doing? If you can copy up to 10% of the work, that could be a disproportionate value of the entire document, wouldn't you say?

Ms. Donna Bourne-Tyson: It's 10% or a chapter, whichever is less. Certainly for other works, like a poem or a short story, we wouldn't.... It's not the same consideration. You treat it as a whole and—

Mr. Dane Lloyd: It changes, obviously.

Ms. Donna Bourne-Tyson: —you pay for the use of that.

Ms. Andrea Stewart: I wanted to give examples from my own educational institution from the compliance perspective.

I can give examples of a reduction in educational printing through our print services department. Instructor print copy requests have gone down substantially over the years. There was a 25% reduction in 2015–16, 27% in 2016–17, and 35% in 2017–18. They're printing less and less.

The content that does go through our print services department is reviewed by our copyright office to ensure it's in compliance and meets the fair dealing requirements, if they're using fair dealing as a mechanism in order to print.

I would also say that, with our learning management systems, we have mechanisms built in, as well. Faculty are expected to sign off on a responsibility statement when they go into the LMS. We have auditing mechanisms also in place internally in order to encourage and ensure that the faculty are following the policies.

The Chair: Thank you very much.

We're going to move to Mr. Baylis. You have five minutes.

Mr. Frank Baylis (Pierrefonds—Dollard, Lib.): Thank you, Chair.

I'd like to start off by getting my head around some numbers. I'll start with you, Ms. Workman. You said that the universities are paying out $300 million. Is that correct?

● (1500)

Ms. Teresa Workman: That's my understanding from the statistics gathered by the Canadian Association of University Teachers.

Mr. Frank Baylis: Could that information be submitted to the clerk, please?

Ms. Teresa Workman: They have it in my speaking notes.

Mr. Frank Baylis: I do not mean your points. Is there some document that states $300 million?

Ms. Teresa Workman: I'm not sure, but I'll check into that for you and submit it.

Mr. Frank Baylis: Yes, I'd like to see an actual document.

I'll turn to you, Ms. Bulger. You said there is a loss of $30 million, and I believe you said there's a study by PwC. Is that correct?

Ms. Terrilee Bulger: That's correct.

Mr. Frank Baylis: Could you also submit that?

Ms. Terrilee Bulger: I certainly can.

Mr. Frank Baylis: I have another number—we have a lot of threes here. You said that your business has lost $30,000 and gone down to $3,000.

Ms. Terrilee Bulger: I don't have the exact numbers back to what it was in 2012, but for a company of our size, my estimate was about eight to ten times what we had.

Mr. Frank Baylis: Yes, so you said you were making $3,000, and you expected to make 10 times more or $30,000.

Ms. Terrilee Bulger: That could be, yes.

Mr. Frank Baylis: So you've lost $30,000.

Ms. Terrilee Bulger: Around there, yes.

Mr. Frank Baylis: As a final number, Mr. Campbell, you said two things. First, you are paying $200,000 per year right now in licensing. Is that correct?

Dr. H.E.A. (Eddy) Campbell: No. It's the cost of our copyright activities.

Mr. Frank Baylis: Is that $200,000 per year?

Dr. H.E.A. (Eddy) Campbell: Yes. This includes, for example, the salary of our copyright officer—

Mr. Frank Baylis: You already said that. How much of that is Canadian? How much goes to Canadian producers, out of that $200,000?

Dr. H.E.A. (Eddy) Campbell: I do not know.

Lesley, can you help with that?

Mr. Frank Baylis: You don't have to have it right now, but I'd like to know that number.

Ms. Lesley Balcom: That's a figure we could submit, but just to be clear, it doesn't refer exclusively to licensing costs. It includes salary costs as well.

Mr. Frank Baylis: In that case, I'd just like to know the licensing cost, not the person doing the licensing. I understand that.

Just how much is going out the door, and how much is specifically going to Canadian content.

Ms. Lesley Balcom: It's very hard for academic libraries to determine what's Canadian content—

Mr. Frank Baylis: Do your best.

Ms. Lesley Balcom: —because what we're well aware of is that a lot of Canadian authors aren't writing in Canadian publications. I just want to be clear on the question.

Mr. Frank Baylis: Why don't we do this then. Tell me how much is going to Canadian publishers because that's what you're representing. Is that right, Ms. Bulger?

Ms. Terrilee Bulger: Yes.

Dr. H.E.A. (Eddy) Campbell: The millions of dollars that we do spend across the country on electronic resources from the largest publishers in the world—Springer Publishing, John Wiley & Sons, Inc., and the like—are full of academics who are writing for other academics to read. Those are typically the uses of those materials, and they're virtually all in electronic form. Part of the reason we see such an intense increase in library costs to universities over time has been this consolidation of publishers—

Mr. Frank Baylis: Yes, the five big publishers.

Dr. H.E.A. (Eddy) Campbell: —and it gives them a certain power to—

Mr. Frank Baylis: I get that. I'm looking very specifically to understand the financial impact for Canadian content providers and trying to distill it down to this one group, so if you could work that—

Sorry, go ahead, Ms. Workman.

Ms. Teresa Workman: Another number I have is from Statistics Canada. It says that the data shows that Canadian publishing was largely unaffected by fair dealing, given the other changes taking place in the market. In fact, Canadian publisher operating profit margin has increased since the copyright reform—

Mr. Frank Baylis: I was a businessman before becoming a politician, so I could have amazing profit margins on $100 of sales, but I'd rather have not such great margins on $100 million.

Ms. Teresa Workman: Fair enough.

Mr. Frank Baylis: I've heard that statistic.

I'm going to run out of time this round, but I do understand that all three of the universities have expressed a desire to help the Canadian publishing groups.

You said that you're buying New Brunswick books. Is that correct, Mr. Campbell?

Dr. H.E.A. (Eddy) Campbell: Yes, certainly.

Mr. Frank Baylis: And Ms. Bourne, you said you're buying two books from every.... Did I get that right?

Ms. Donna Bourne-Tyson: Form every small press in Canada, and everything that's published in Atlantic Canada.

Mr. Frank Baylis: So you are considerably aware.

Ms. Workman, you impressed upon us in your opening remarks that we should look after indigenous.... When you said "indigenous," am I to assume that you only meant first nations, or would you mean indigenous like the types of writers whom Ms. Bulger says she represents, who are indigenous to the Maritimes?

Ms. Teresa Workman: Certainly ours would be to the Maritimes, but across the country I think it's important to deal directly with the first nations and indigenous communities.

Mr. Frank Baylis: I want to understand whether you also see some need or interest in helping the indigenous who are not necessarily first nations.

● (1505)

Ms. Teresa Workman: Yes.

The Chair: We'll get back to you.

We're going to go back to Mr. Lloyd for five minutes.

Mr. Dane Lloyd: Thank you.

I have one quick point to follow up on your very good explanation. You noted that printing has gone down. Wouldn't you say one of the primary causes of this could be that people are able to do these things at home?

Ms. Andrea Stewart: No, I'd say the biggest cause is the change in landscape in the educational sector. Our users are expecting and demanding more electronic content. At NSCC, we're spending about 80% of our collections budget on electronic resources, which means journals and e-books, as well as streaming media content. It's not a correlation to fair dealing; it's a correlation to reality.

Mr. Dane Lloyd: Thank you. I appreciate that.

President Campbell, I could see you were chomping at the bit under my previous line of questioning, to have a chance to respond.

Dr. H.E.A. (Eddy) Campbell: I just wanted to add that the vast majority of our faculty members are authors in their own right. I am. I write copyright materials to be published. The idea that our faculty members would be interested in some kind of widespread abuse of copyright doesn't pass the sniff test for me.

We live in this world where we're writing materials that are copyright. It's impossible not to notice that a huge issue for universities across the country is open access journals, for example, where a copyright is established but not necessarily paid for. It's a really complex area. I don't envy you your task, but I would defend the university communities as a whole as wanting to be in compliance with the legislation that we have, and at the same time really wanting our publishers to succeed.

I guess where we might disagree with our publishers is over the role of fair dealing, so we don't think it's the right tool for our creative community, but we're not the creative community...except when we are.

Mr. Dane Lloyd: I appreciate those comments and am certainly not accusing the university of engaging in deliberate copyright infringement. I understand that you and many of your faculty are creators, but wouldn't you say there's a clear distinction between people who are tenured or paid as members of a university, as opposed to the clients of Ms. Bulger here, who are private citizens? These publishers are not granted pay from an institution or from a government; these people depend upon royalty cheques for their living.

Wouldn't you say it doesn't affect the teachers who are professors creating copyrighted materials as much, because they have a source of income? By contrast, for the publishers Ms. Bulger is representing, this is their only source of income, or at least their primary source of income, so it's in their vested interest.

Dr. H.E.A. (Eddy) Campbell: I agree absolutely. Somehow for me it's like being boiled in oil to be sitting next to Ms. Bulger engaging in this argument. We generally don't think the issues you're trying to address are properly addressed through fair dealing. We think there are other vehicles through which the issues you're raising need to be addressed. It's never been easy to make a living as a writer at any time in Canada, or indeed in any other place. I guess I don't agree that the right vehicle for addressing that particular issue is fair dealing for educational institutes, but there are big issues here. We all want to have a creative community that's prosperous.

Mr. Dane Lloyd: I'm sorry to cut you off. I'm going to give my colleague the last minute, but I appreciate that.

Mr. Matt Jeneroux: Thank you very much.

Ms. Bulger, are you familiar with the syllabus service that UNB has? They explained it a little in terms of how they manage fair dealing.

● (1510)

Ms. Terrilee Bulger: No. I'm just learning that today.

Mr. Matt Jeneroux: Oh, okay. I was banking on that, whether or not that satisfied some of your concerns. I guess if you're not fully aware of it, then the question's moot, anyway, so I'll hand it back over—or you might as well use up a good minute with that.

Ms. Terrilee Bulger: I would say that the numbers aren't there. When I hear these lovely numbers with regard to what's happening at the institutions to support the creative economy, that wouldn't be our experience. I can't speak for every publisher on that. I don't know where they buy the books. They can buy their books from wholesalers. They can buy them from bookstores. I can't say that they're not purchasing the books. They purchase very little from us, and as I said earlier, we don't see the transactional licences. We don't see much of that at all.

The Chair: Thank you.

We will go back to you, Mr. Baylis, for five minutes.

Mr. Frank Baylis: Thank you, Mr. Chair.

I'd like to continue with my line of questioning. I'm going to make the assumption that everything I've heard is correct. I do believe you've all told me what you believe to be correct: that it's about $300 million, and out of that maybe, say, 10% has disappeared, in whatever way, from the publishers; and that the libraries and universities want to support our Canadian content creators. That's all I'm hearing about. I don't really care about content creators outside of Canada.

I'm also going to allude to what I hear from the libraries and universities, that you want to support them but you don't believe fair dealing is the right vehicle to support them. If you do want to support them—you'll all get a chance to answer the question—buying two books is not a serious way of supporting them. Let's call that truthful, too.

When I went to high school, I had to buy a lot of Canadian books, Canadian authors to read. Quite frankly, my class of 30 people had to buy 30 books, one class alone. If we want to support them, I'd like to hear from you now—and each one of you will have a chance—about how we can support our Canadian content creators in a meaningful way. If it's going to cost about $30 million, what's your share and how can it be done?

I'll start with you, Mr. Campbell.

Dr. H.E.A. (Eddy) Campbell: Essentially, we believe we pay for what we use.

Mr. Frank Baylis: I'm asking a question. Very specifically, how can we support our Canadian content creators? I'm not asking if you're paying.... I believe everything you said. You've said you want to. How can we?

You don't want the New Brunswick writers to disappear, I suppose.

Dr. H.E.A. (Eddy) Campbell: No.

Mr. Frank Baylis: You see this as part of your mandate—

Dr. H.E.A. (Eddy) Campbell: Yes.

Mr. Frank Baylis: —but buying two books is not going to keep them alive. How can we do it?

Dr. H.E.A. (Eddy) Campbell: I don't have a solution for you here today.

Lesley, do you...?

Ms. Lesley Balcom: I'd be happy to add that I believe that there are grants through Canada's Council for the Arts, as well we can look at the public lending right and how that could potentially be expanded to an educational context, and look at regional publishers in particular that are always going to have a relatively small market in this international ecosystem we're part of now. I think there are a number of avenues for exploring the support of Canadian individual creators and the Canadian publishing industry that are definitely worth exploring. Those are just a few ideas. I think some of them are in play already and could benefit from increased support.

Mr. Frank Baylis: Ms. Bulger, how would you see this, barring going back to fair dealing? Is there another avenue you see to support yourselves, the Canadian content creators?

Ms. Terrilee Bulger: We haven't given that kind of detailed thought to it. I know you're going to hear from a group this afternoon that has a course-pack product that can work for Canadian publishers. Aside from having some sort of policy, I think it's all up to individuals, if they can find a way of doing the support. It's more work for people, really. Collective licensing is the easiest for us. It's the easiest for them. It's easiest for people, knowing that they're covered when they're copying or using copyrighted work.

Mr. Frank Baylis: Okay.

Ms. Workman.

● (1515)

Ms. Teresa Workman: Our position is that we believe that fair dealing is working. I understand that Ms. Bulger's position is that it's not. I don't have an answer, a solution.

Mr. Frank Baylis: You did state you want to support indigenous first nations and others.

Ms. Teresa Workman: Absolutely.

Mr. Frank Baylis: How do you think we should go about it?

Ms. Teresa Workman: I don't know that we have—

Mr. Frank Baylis: If Mrs. Bulger is saying go back to the Access Copyright and now you're saying don't do that, do you have something else to suggest then?

Ms. Teresa Workman: I do not.

Mr. Frank Baylis: Go ahead.

Ms. Donna Bourne-Tyson: I do. But first I just want to say the Canadian publisher data indicated that the Access Copyright royalty has declined only by 1%, and that was a published statistic.

There are better ways to support Canadian culture than fair dealing. The Canada book fund, the SSHRC aid to scholarly journals program, public lending rates for the libraries, transactional licences as we've already said, and things like Coalition Publi.ca, in partnership with Érudit, which is Canadian academic and small press journals, helping to fund those to move towards an open-access sustainable model, working with the government.

Mr. Frank Baylis: You mentioned an "open-access sustainable model"? Can you explain that?

Ms. Donna Bourne-Tyson: Yes. In Europe, they have a Europe 2020 program where they're committing to make many of their publications open access by 2020. The libraries work with the journal to create a sustainable open-access model, funding them largely to the same extent that we do now through a commercial subscription but with the commitment that they will make the journal open access so it's available not only to a closed academic community, but to society.

Mr. Frank Baylis: How does that help the Canadian content?

Ms. Donna Bourne-Tyson: Coalition Publi.ca is a Canadian project to do that with the journals that are currently published by Érudit, which is a Canadian publishing platform.

Mr. Frank Baylis: Okay. I'm out of time. Thank you.

The Chair: Mr. Masse, you've got your two minutes.

Mr. Brian Masse: Thank you, Mr. Chair. The panel here has been terrific. It's good to get out of Ottawa to hear.... There are some common themes, but we get more specific testimony here.

One of the things I am interested in is positions with regard to the Copyright Board.

Ms. Stewart, we'll start with you. There's been discussion about it. I just want to get your perspective. Do you think—and I only have two minutes to go quickly across— it's functional or not in the current status? You don't have to get into the details, but that would be an interesting perspective, I think, and would be important for our deliberations.

Ms. Andrea Stewart: Okay, I'll try to talk really fast.

In terms of the Copyright Board, I think there are areas for enhancement. Some of our other colleagues have said this in previous hearings, but a couple of areas that I would emphasize would be that the tariff should only apply prospectively, and if there is any retroactivity that it be limited to less than a year, and that it be in a tariff regime that remains optional, allowing educational institutions the independence to choose where they're investing their dollars where needed and most required for their learning community. Also, I think there should be the developing of regulations regarding transparency and appropriate regulation of those copyright collectives, which has been done in other jurisdictions.

Mr. Brian Masse: Ms. Workman.

Ms. Teresa Workman: We represent eight universities across Nova Scotia, and to be honest I haven't had that discussion with them so I can't answer that.

Mr. Brian Masse: That's fine. Thank you, Ms. Workman.

Ms. Bulger.

Ms. Terrilee Bulger: We don't have any complaints about the Copyright Board at this time.

Mr. Brian Masse: Ms. Balcom.

Ms. Lesley Balcom: The Copyright Board isn't sufficiently timely in its decision-making. I would certainly echo the comment that Andrea has made. I think it's really important that their decisions be prospective and not retrospective. Especially given the delay in their decision-making, combining that with an ability to make retrospective decisions is not functional.

Mr. Brian Masse: That seems to be one of the things that are controllable in the situation. We're just doing a review here. Whatever we do, we'll get a report and then we'll send it back to the minister, the minister will then digest the report and send something back out. Then if there is legislation or changes, I would suggest that it would most likely result in further hearings. Unilateral changes to our copyright laws without specific testimony related to those specific amendments would be highly unusual for legislation in this matter.

The thing that we would be looking for, if anybody has any further submissions.... What we're seeing as a regular trend here is that in terms of the timeliness of the decisions for the Copyright Board, there seems to be at least some thought that if the rules were applied more quickly and more consistently and more understandably, there might be some success right there.

Thank you.

● (1520)

The Chair: You have a final couple of minutes, Mr. Jowhari.

Mr. Majid Jowhari: Thank you, Mr. Chair.

I have a quick question around open access. I have a 24-year-old daughter who's heavily involved in research that's she's trying to pursue...upper post-secondary education. When she heard the committee was doing the copyright study, I asked for her input. She talked about the fact that in doing her research often she needs access, aside from the publication, to a lot of data to be able to get an understanding of the genesis, if she wants to interpret the data in a different way. She has a hell of a time—oh, sorry, am I supposed to say that? She has a hard time getting access to the data. She started talking about open access and this was what we need.

I just quickly want to get your feedback. When I go back, what can I tell her?

Ms. Lesley Balcom: I think open access is absolutely the way of the future, and something that we, as academic libraries in this region, are very committed to. For example, UNB has an institutional repository that we've invested heavily in developing. It means all our publications that are created within the UNB context have a place to be made available to people like your daughter, through open access.

We host 22 journals. We have a journal publishing platform, and half of those are open access.

Part of the reason this is so important is that it is our faculty members collectively and students, who are producing this information and then buying it back, as opposed to being able to make it available to our students....

Mr. Majid Jowhari: I think when she was explaining to me, the way I understood it is, the whole work is being sold to these publishers, both the paper as well as all the data. The publication is shared and goes through the Copyright Act, and fair dealing, but the data is not. I'm trying to reconcile whether my understanding is true, and it it's the case, how is that going to help the entrepreneurs who are trying to get into research and development?

Dr. H.E.A. (Eddy) Campbell: I think this goes way beyond copyright. I'm on the board of CANARIE, the national research network across the country. We are helping to fund Research Data Canada to explore these issues. If I understood you correctly, Majid, your daughter is interested in the data on which the papers are based —

Mr. Majid Jowhari: Yes.

Dr. H.E.A. (Eddy) Campbell: —and there is a reasonably good argument for that data to be widely available, with open access, perhaps, but there is, alas, a strong sense of ownership of that data by the people who conducted the experiments that created it. There will need to be a significant change in culture around this.

I think you could argue, however, that much of this research is in fact publicly supported, and that gives our government an interest in the fate of that data and who has access to it.

You talk about a live issue. You have a difficult job dealing with this definition of "fair dealing". I would argue that probably this is a much more complicated topic in the longer run. It is very active, and you were exposed to a range of opinions here today. The range is far greater on that particular issue, and a lot of work is going on.

Mr. Majid Jowhari: I don't know how much time I have, but on the other side—

The Chair: Very quickly.

Ms. Donna Bourne-Tyson: The tri-agency is working on a research data policy that will be a companion to their open access policy, making it a requirement to submit your dataset in addition to an open access copy of your publication. The Council of Atlantic University Libraries and CARL, the Canadian Association of Research Libraries, have created a network called Portage, which is working to help all researchers write data management plans, figure out where they're going to deposit their data and aggregate their data appropriately, and provide metadata so that it's useful for other researchers. It's in the works.

● (1525)

Mr. Majid Jowhari: Okay. I think my time is over, but I thank you for that. At least I'll have something to go back to my daughter with.

The Chair: On that note, I'd like to thank our first panel for coming in today and sharing your stories in a nice, respectful way. This is a very complex file, and there are a lot of moving pieces, so we're certainly getting a variety of feedback.

Dr. H.E.A. (Eddy) Campbell: Thank you all very much for listening to us.

The Chair: Oh, you're very welcome. We're going to suspend until four o'clock.

● (1525)

_____ (Pause) _____

● (1600)

The Chair: Welcome back, everybody, for the second portion of our panel.

Today we have with us from Dalhousie Faculty Association, David Westwood, president. From Music Nova Scotia, we have Scott Long, executive director. I understand you had your meetings here yesterday?

Mr. Scott Long (Executive Director, Music Nova Scotia): All since last Wednesday, yes.

The Chair: Excellent, so you're familiar with the building.

Mr. Scott Long: I don't have much of a voice left; that's the problem.

The Chair: From the Canadian Publishers Hosted Software Solutions, we have James Lorimer, treasurer. Finally, as an individual we have Andrea Bear Nicholas, professor emeritus, from the Maliseet First Nation.

Each of you will have five to seven minutes, and then we'll go to a round of questions. Thank you very much for coming, and we're going to start off with Mr. Westwood. You have up to seven minutes.

Mr. David Westwood (President, Dalhousie Faculty Association): Thank you very much for the opportunity to be here today.

As you mentioned, my name is Dave Westwood. I'm the current president of the Dalhousie Faculty Association, and we represent 950-plus academic staff, librarians, and professional counsellors at Dalhousie University. We are the largest research-intensive university in the Atlantic region.

Our interests—what I'll be speaking about today—align, of course, in the academic realm with two fundamental aspects of our mission, which are teaching and research, primarily guided by the notion of the public good. Our interests are in the area of accessing content and producing and protecting content. Both are a key part of our role at the university.

We support a balance of rights for users and producers primarily for those reasons. We respect the need for content to guide our scholarly work, and we also appreciate the need to access materials for the purpose of educating the leaders of tomorrow. We support a continuation of the 2012 Copyright Modernization Act.

Our specific interests would be in preserving the fair dealing exception that is in effect today. We believe it is necessary and fundamental for the education of Canadians, and we believe it strikes a good balance between the needs of those who access content and content producers.

Many of my speaking notes are in alignment with the Canadian Association of University Teachers, CAUT. I believe they have already spoken or will probably be speaking at a panel in the future, and so many of our points are simply a reflection of their interests.

We believe that aboriginal peoples' rights need to be recognized and reconciled with current copyright legislation. Of course, aboriginal ways of knowing differ in many ways from European ways of knowing, and the notion of ownership and sharing are quite different between the dominant culture and aboriginal culture. We believe that needs to be reflected in whatever version of the legislation comes next.

We believe digital locks have a place, of course, but we believe that not indicating the conditions under which those locks need to be and should be broken puts the quality of education at risk. We think to enforce or to take advantage of the fair dealing rights, sometimes digital locks need to be circumvented, and we believe there should be better indication of the conditions under which that is appropriate.

We believe in maintaining copyright term of life plus 50 years. It strikes a good balance again between the rights of the families of those who produce content and the need for and the benefit of accessing that content for the purpose of education and keeping education current with issues that are of recent interest.

We don't believe that crown copyright serves a good educational purpose in the sense that many of those works were funded already by the public purse and paying for them again doesn't, in our view, seem to make much sense.

As I said, our primary belief is in the emphasis of balancing rights, and we believe the current Copyright Act serves those purposes quite well.

I'd like to raise a number of additional issues that go beyond those that CAUT would be speaking about. One is to recognize the new challenges posed by the digital era. One issue in particular that comes up is how taking advantage of fair dealing rights in the performance of a research piece, like a dissertation, can become complicated when the dissertation is released online as a part of policy because then it becomes available to others who may not be using it for fair dealing. We believe that's an important issue that needs to be given some thought.

Of course the issue of multilateral trade partnerships is front and centre in extending the lifetime of copyright, and those are complex issues. Unfortunately, I don't have much to say about that today, but just recognizing that will be a challenge, of course, for copyright legislation.

The challenges of open access models are very real. These are exciting times for us in academia with the ability to pay up front, take copyright, and make the work freely available to everybody, but of course challenges are posed by that as well. I believe it's time to take that into consideration in copyright legislation.

One issue of particular concern for many of our members is online crowd-sourced platforms where things like our own lecture notes, test materials, and recordings of our lectures are now being released online without our permission. You can see that we have a vested interest, as well, in protecting our own works from inappropriate use.

● (1605)

Issues around academic fraud are also a part of the copyright equation, to some extent. Things where people are paying others to author works that will be submitted for course credit overlap in the area of academic integrity and copyright, and I believe some of those issues may be of interest to your panel.

Thank you.

The Chair: Thank you very much.

Now we're going to move to Music Nova Scotia and Mr. Scott Long. You have up to seven minutes.

Mr. Scott Long: Thank you, Mr. Chair.

Excuse me in advance for my voice if it's a little weak. I've done a lot of talking.

The Chair: Have you been doing lots of singing?

Mr. Scott Long: Singing, not quite.

Thanks for the opportunity to testify before the committee today.

The music industry has transformed itself into a predominantly digital industry, and to achieve this the music industry has worked tirelessly to adapt, innovate, and invest to drive a new digital age for music. However, for this positive development to be sustainable, there must be a fair digital marketplace for all participants playing with the same fair rules.

The sustainable and balanced growth of the digital content market continues to be undermined by a fundamental flaw in legislation underpinning the market that has created a value gap, a mismatch between the value that online user uploaded services, such as YouTube, extract from music, and the revenue returned to the music community. It is currently the biggest policy challenging the music industry today. For music to thrive in a digital world, those who are creating and investing in music must be able to negotiate fair commercial terms for its use.

Furthermore, digital music services that are licensing music on fully negotiated terms must be allowed to compete on a level playing field, something they currently do not have in Canada.

The Canadian music community is united in its call to fix the value gap, and it's advocating for a legislative solution. The government needs to look at the laws that were put in place at the dawn of the Internet that were designed to help the Internet flourish in the early days. Today those laws are hurting creators. In many cases, they mean that creators are subsidizing some of Canada's largest vertically integrated corporations. Today, the consumption of music has reached record-breaking numbers, yet our creators are worse off financially than they were in the 1990s.

Canada's creators urgently need the government to act because the laws in place now are preventing digital success stories from being shared with creators. Changes to the Copyright Act would create a functioning marketplace where artists are paid when their work is commercialized by others.

I'm sure most of you are aware of the term "value gap". To summarize, the value gap describes the growing mismatch between the value that user uploaded services—again, such as YouTube—extract from music, and the revenue returned to the music community, to those who are creating and investing in music. The value gap is the biggest threat to the future sustainability of the music industry in Canada.

To fix the value gap, copyright reform must include the following.

Number one is an examination on the effects of safe harbour laws and exceptions. Safe harbour hosting provisions were introduced into copyright law around the world in the late 1990s and early 2000s to protect technology companies that were investing in developing the infrastructure needed to move content around the Internet from copyright infringement liabilities. Again, these provisions were introduced in the early days of the Internet, to help technology flourish at the time. In return for this protection, these companies were required to removed content only if they were notified of copyright infringements.

Years later, a number of platforms now exist that actively provide content rather than simply host it. These include video-sharing platforms, digital locker services, and user-generated content sites that are often generating vast revenues off the backs of creators' work, yet who maintain, at best, a partial liability for the content they provide.

The Canadian music industry believes that companies should only benefit from safe harbour defence if it is truly providing only technical, automatic, and passive service. Some companies are exploiting safe harbour positions, depriving creators of a fair value for their endeavours, and undermining legitimate music services in what is an increasingly important revenue stream for creators. Legislative action is needed to ensure that laws on copyright liability are applied correctly and consistently, so that online user uploaded content, services making music available, must negotiate their licences to do so with creators instead of riding freely on the backs of creators with these safe harbour privilege liabilities.

The music community is united in calling for policy-makers to take action.

Number two is the removal of the $1.25 million radio royalty exemption. When the Copyright Act was amended in 1997, every commercial radio station in Canada was exempt from royalty payments on their first $1.25 million in advertising revenue. Since then each of the nearly 700 commercial radio stations, regardless of their size or revenue, were only required to pay a nominal $100 to artists and recording companies on the first $1.25 million in advertising they earn. This is outdated and unjustified, and simply a cross-subsidy paid by artists and their recording industry partners to large, vertically integrated, and highly profitable media companies. Annually, the exemption costs rights holders an approximate $8 million, and since 1997 until 2017, it has resulted in losses to artists and labels of nearly $150 million.

● (1610)

These losses are contrasted to the fact that the radio industry has experienced steady growth and net profits before income tax from approximately $3.6 million in 1995, when the exception was first proposed, to approximately $437.5 million in 2016.

What should be done? Repeal subparagraph 68.1(1)(a)(i) of the Copyright Act. This will give power back to the Copyright Board and to stakeholders to come to a fair, market-based tariff, one that is set on a sliding scale and takes into account station revenues, use of commercial music, and ability to pay.

Number three is the amendment of the definition of "sound recording". The current definition of "sound recording" in the Copyright Act is worded in such a way that performers and record labels are excluded from receiving royalties for the use of their work in television and film soundtracks. This exception is unique to television and film, and does not apply to composers, songwriters, and music publishers. It is inequitable and unjustified, particularly in light of the profound role that music plays in soundtracks. It is estimated that artists and recording labels lose $45 million annually to the current definition of "sound recording" in the Copyright Act as it stands now.

What should be done? Part II of the Copyright Act should be amended to allow for sound recordings used in television and film to be eligible for public performance compensation, pursuant to section 19 of the Copyright Act.

In summary, the Canadian music industry recommends the following changes: one, examining safe harbour provisions for companies that corner business as provision of content; two, eliminating the $1.25 million radio royalty; and three, changing the definition of "sound recording" in the Copyright Act.

At the outset of the digital era, creators were promised that they would be ushered into a golden age that would deliver them financial and artistic rewards. However, the reality for artists and their partners in the creative industries has been almost exactly the opposite. As a result of rules established two decades ago, wealth has been diverted from creators into the pockets of massive digital intermediaries, and what little is left over for creators has been concentrated into fewer and fewer hands. As a result, the creative middle class is disappearing, and with it numerous jobs and opportunities.

When we compare the global revenue from the sale of recorded music in 1999 with today, it is obvious to anyone that jobs and opportunities have been lost. This is a problem we're solving. Help us put Canadians back to work in the creative sectors. Help artists and other creators get back to full-time creative work. The government can address this and other effects caused by the value gap by taking simple, moderate steps to rebalance rules created at a time when everyone was guessing how the digital age might unfold.

The guessing is over. Now we know that the golden age promised to creators has never happened. We therefore collectively owe it to them to address the rules that have so profoundly undermined their careers. These rules must be adapted to the reality of today's digital marketplace in a way that is fair to all stakeholders.

Thank you.

● (1615)

The Chair: Thank you very much.

We're going to move to Canadian Publishers Hosted Software Solutions. Mr. Lorimer, you have up to seven minutes.

Mr. James Lorimer (Treasurer, Canadian Publishers Hosted Software Solutions): Thank you very much.

My name is James Lorimer. I'm the publisher of Formac Publishing in Halifax and the CEO of another publishing company, Lorimer, in Toronto. My colleague, Errol Sharpe, from Fernwood Publishing, who's involved in the project I'm talking about, wanted to be here today, but, unfortunately, he's ill.

I'm speaking on behalf of Canadian Publishers Hosted Software Solutions, which is a non-profit consortium of five independent publishing houses. Actually, I feel like I'm kind of an add-on to the session earlier today because what I have to talk about is what was being discussed in the earlier session.

For the last three years, the five of us, the publishers, have been working on a project to offer middle ground in the polarized conflict between Canadian universities and Access Copyright. We think the middle ground is to make it appealing, easy, and affordable to buy chapters of our books for course use. You can go onto our website, which is up and live now, and see how this works. It's www.canadiancoursepacks.ca.

On our platform, course instructors can search the chapters in the books published by our firms and by other Canadian publishers on the social sciences and humanities. When they find a chapter that looks interesting, they can get a short abstract of its content, and they can read the whole chapter right on the website.

Each chapter is priced, and the cost averages 10¢ a page. The course instructor can select the chapters they want to use for the course and put them together in what's called a course pack. The course instructor gets a unique identifier for the course pack to take to the university bookstore just like they take the title of a textbook they are requiring their students to use.

The bookstore orders copies of the course pack from us. If they order a digital version, the bookstore pays a package price of about 10¢ a page, so that would be $30 a copy for a 300-page course pack, which would often cover all the reading material required for a single course. If the bookstore orders printed copies, they pay a few dollars more, six or seven dollars more, for the printed bound copy. Our option puts the course instructor's selection of chapters into a university bookstore printed and bound for $36 or $37 a copy. With its usual markup, the bookstore would sell the package to the students for about $50.

This option compares well to standard university course textbooks, which are now priced, as you probably have already heard, at $50, $75, $100, $125, and up. To summarize, the middle ground we've developed is a digital platform for publishers to sell individual chapters for course use at reasonable prices.

We're well aware that most Canadian university administrations have implemented a policy that the course instructors and students—you were hearing about this earlier—can take chapters of our books for free and use them in courses. They use a guideline of 10% of the original book, usually one or two chapters.

We realize the alternatives to this 10% policy, which have been open to the universities today, are awkward, frustrating, and expensive. One alternative, paying the excess copyright tariff, is very costly to universities, and it doesn't connect directly to use. The other alternative, assembling permissions from rights holders for each individual portion of a book and negotiating fees for each item in the course pack, is awkward, expensive in staff time, often frustrating, and unpredictable in terms of the bottom-line cost.

Our project aims to break through the current impasse between the universities and Access Copyright. We think university administrations can believe that the education exemption is fair and may use them to take our chapters for free, but still opt to advise course instructors and bookstores to use our platform and purchase course packs that they can sell to students. Why would they do that? Because, as I've said, our option is easy for course instructors to use, requires no staff time for copyright clearances, produces reasonably priced course materials for students, and leaves universities free of the risk that in a few years the courts will rule that they should have been paying.

We do believe that when all is said and done, the courts will find that fair dealing under the Copyright Act today does not allow universities to take our chapters for free.

● (1620)

Even if the courts determine that it has been fair use up to now, we expect they will find that it's no longer fair use to take chapters for free when they can be easily found and purchased at reasonable prices on an easy-to-use platform aggregating thousands of chapters from hundreds of books from many leading Canadian publishers.

Nevertheless, I am here today to ask you to recommend that the act be amended. The request is for an amendment to clarify that when portions of a copyright work are readily available for purchase at reasonable prices, fair use does not encompass taking them for free. While we believe that the courts will ultimately make this determination based on the Copyright Act as it stands right now, that process may take many more years. Conflict on this issue will continue unabated. You've been exposed to lots of that in the hearings you've had up to now.

Incorporating clearer and more definite language in the act would likely encourage universities to move away from their current hardline stand, and to accept a middle ground resolution.

If there's time in the discussion to follow, I'd be happy to brief you on the initial responses we've had from the 35 universities we've approached since January to brief them on our platform and on our middle ground resolution around using copyright material for courses.

Thanks for the opportunity to tell you about our course pack project.

The Chair: Thank you very much.

We're going to move on to Ms. Andrea Bear Nicholas, Professor Emeritus, from the Maliseet First Nation.

Professor Andrea Bear Nicholas (Professor Emeritus, St. Thomas University, As an Individual): [*Witness speaks in Maliseet*]

[*English*]

My name is Andrea Bear Nicholas. I am from the Tobique First Nation in New Brunswick, and I've been teaching as the St. Thomas University chair in native studies for 20 years. I'm very grateful for this opportunity to speak with you.

As chair in native studies at St. Thomas, I began working over 25 years ago with a group of Maliseet families to publish nearly 5,000 pages of stories in our language, which had been recorded by a non-indigenous academic between 1970 and 1983. From 1994 to 2004, we worked with the collector to publish these stories. When he offered to sell the 37 original, large, double-sided tapes to the families for $4,000, they agreed to pay him, but only on condition that he surrender copyright to the families, otherwise they wouldn't be able to use them.

He signed such an agreement and was paid his price, but subsequently changed his mind. Since Canadian copyright law gives copyright to those who record stories rather than to those who tell them, he refused to allow the families to publish the stories except under his sole copyright. For the families this would have been tantamount to surrendering claim to the oral traditions of their elders, and they could not bring themselves to do it.

I and the families subsequently spent three years and $30,000 in legal fees trying to negotiate with the collector. The families were even willing to publish the stories under a joint copyright with the collector, but he refused even that. In the end, his lawyer stopped responding to our lawyer. Consequently, the families made the difficult decision not to publish the stories at all, fearing the real possibility of being sued under section 18 of the Canadian Copyright Act.

A moment is needed here to explain how detrimental this has been for my language, Maliseet, which is said to have only 60 lifelong speakers out of nearly 7,000 people. Like most indigenous languages in Canada, ours is in fact deemed to be critically endangered, which is the last category before becoming extinct according to UNESCO's *Atlas of the World's Languages in Danger*. When I received a sizable SSHRC grant in 2010 to investigate the effectiveness of adult immersion in revitalizing an endangered language, we were prohibited by Canadian copyright law from using both the tapes and the transcriptions that we had made from the tapes.

When the Canadian Association of University Teachers, CAUT, learned of this appalling situation, they helped us to publish the first volume of stories and promised to provide legal support in case we were sued. We now actually look forward to being sued, so that the matter might be settled in court.

We are aware that songwriters do not lose rights to their songs when someone else records them, and we ask only for the same right to be guaranteed to storytellers, particularly indigenous storytellers, who are the keepers of our intellectual and cultural heritage. For anthropologists, linguists, and others, however, Canadian copyright law has served as the perfect tool for stealing and exploiting our intellectual and cultural heritage, rather than for protecting it and promoting the survival of indigenous cultures.

One of the calls to action in the 2015 report of the Truth and Reconciliation Commission called on the federal government to fully adopt and implement the 2008 UN Declaration on the Rights of Indigenous Peoples, and in 2016 the Government of Canada declared its intention to do so. Article 11 of the declaration declares that indigenous peoples must have the right to "practise and revitalize their cultural traditions and customs", including "the right to maintain, protect and develop the past, present and future manifestations of their cultures".

There can be no question that the oral and written versions of our stories are manifestations of our culture, and there is no question that the theft of these traditions has had a destructive impact on our ability as Maliseets to revitalize our language and culture.

● (1625)

The final report of the Truth and Reconciliation Commission declares that reconciliation "requires constructive action on addressing the ongoing legacies of colonialism that have had destructive impacts on Aboriginal peoples' education, cultures and languages...."

Residential schools may no longer exist in Canada, but many destructive legacies of colonialism still exist and actually reinforce each other. That our language is in such a critical state is not so much the consequence of residential schools, since very few of our children were actually sent to one; it is the consequence of being forced, generation after generation, to send our children to schools conducted in the medium of English rather than in the medium of our own language. Since section 18 of the Canadian Copyright Act effectively legalizes the theft of our stories, the right of our children to the oral traditions of their people has been, and still is, doubly denied.

Unless this country moves quickly to remove these legacies of colonialism in its laws and policies, our language and most other indigenous languages in Canada will soon be extinct, and the promise of truth and reconciliation will be meaningless. I sincerely hope this will not be the case.

Woliwon. Thank you.

The Chair: Thank you very much.

We're going to move right into our questions, and we're going to start off with Mr. Baylis.

You have seven minutes.

Mr. Frank Baylis: Thank you, everybody, for being here.

Mr. Long, I'd like to discuss the value gap with you a bit more. If I understand it, you're saying the artists are the losers in this aspect. Who are the winners?

Mr. Scott Long: It's the distribution services on the Internet that are providing the content to the public, such as YouTube, Facebook, and Instagram. It's also any video service where people are uploading their own user-generated content, where music is used but not licensed.

Mr. Frank Baylis: What's happening? Let's talk about YouTube. They're putting up a music video. Is the artist getting something, or nothing?

Mr. Scott Long: Very little. It depends on the level of where you are in your career. If you're a regional artist just starting out, it's probably almost nothing.

YouTube has one of the lowest-paying streaming services rates per stream in the world for the broadcasting of the stream.

Mr. Frank Baylis: We'll come back to how much it's paying.

You're saying it's also using safe harbour laws in a manner that was not originally intended. If I understand this, YouTube puts up some music videos it does not have the right to put up. The safe harbour laws only say the distribution service has to be informed and has to take it down.

First of all, is that happening?

Mr. Scott Long: Sometimes, yes, if the record labels are on top of it. There's technology in place now that enables major record labels to know when their licensed content is being streamed or accessed. They can be alerted to it, but smaller, independent labels wouldn't have as many resources to be able to track that. The Internet is so vast and ubiquitous that it's almost impossible to know where and when your intellectual property is being consumed.

● (1630)

Mr. Frank Baylis: You're an artist. You're in the music business. You make a video. You want to put it out there. Do you want it on YouTube, or do you not want it on YouTube?

What are you asking us to look at, specifically, to change? Do you want us to remove safe harbour? Do you want us to get these services to be more strict in enforcing copyright? What's the perfect world for you?

Mr. Scott Long: For owners of intellectual property and digital content to be able to negotiate based on a fair base royalty rate. Really, it's that simple.

YouTube decides what they're paying, which is almost nothing.

Mr. Frank Baylis: We'll come back to negotiating prices—that's one question—but that has nothing to do with safe harbour. You say it's an issue. Let's say they're paying you fairly. You had an issue about safe harbour. I want to understand that specific aspect. You're concerned that the safe harbour laws are allowing them to pay you too little, but I don't think they're tied to that. Safe harbour, from what I understood, was just protecting them from copyright infringement, if they were to act against it.

Mr. Scott Long: There are other services out there streaming content that probably don't pay anything and may be using safe harbour privileges for that reason.

I'm not exactly an expert in this area, but my gut feeling is that it would not be fair to say that because YouTube pays little to nothing to intellectual property owners, they're not abusing some sort of safe harbour privilege. YouTube is now in the business of promoting content to get users onto an ad-driven platform; they're selling advertising to bring users to it, as opposed to being a passive distribution mechanism.

Mr. Frank Baylis: Yes, so for argument's sake, we have the content providers; they make these music videos. People want to watch them, so they go to YouTube. They start watching them, and they get the advertisement on the side, and YouTube's making all the money. All that advertising is going to YouTube and the artist is getting little to nothing. If the artist is put up there and they're not breaking copyright law, your concern is that YouTube is not paying a fair value. Would that be a better way to say it?

Mr. Scott Long: Yes, and there are also copyright infringement issues because YouTube is a user-generated platform as well, where average consumers are allowed to and encouraged to upload their own content that may contain licensed music that they don't have a licence to use.

Mr. Frank Baylis: Is YouTube being a good corporate citizen in that respect? If they're informed something shouldn't be up on YouTube, are they taking it down in a timely fashion?

Mr. Scott Long: You know, it's a bit of a mess, to be honest with you. There are all kinds of different conflicting stories around that from individual artists we deal with. Sometimes yes; sometimes no; sometimes people who own copyright have it taken down but want it there, and it was pulled off by someone else who claimed they owned it. It's messy.

Mr. Frank Baylis: I understand that.

With respect to negotiating, YouTube pays too little. Would you be looking for governments to regulate a minimum that it has to pay? If you say that every artist wants to negotiate on their own, basically what will happen is all the small people would get wiped up because YouTube would say, "We'll get to you in 10 years; we're busy dealing with the big guys." Then when they get to you, they'll say, "Look, we're going to give you 10¢. Take it or leave it." They have negotiating power. What can the government do in that sense?

Mr. Scott Long: Yes, there needs to be a balanced mix there. There should be a royalty rate set in the Copyright Act, and also with a minimum, I suppose, with room for people to negotiate, as they do with the audio streaming services now, like Spotify, Deezer, and Apple Music. Those markets are open to negotiation with the rights holders and the people who own the catalogues of the intellectual property. There are some negotiations that may happen with the large multinational major labels, but still, the rate's too low.

● (1635)

Mr. Frank Baylis: Okay. Thank you.

The Chair: Mr. Jeneroux, you have seven minutes.

Mr. Matt Jeneroux: Perfect. Thank you very much.

I'm going to pick up right where Mr. Baylis left off on some of that, to see if we can flesh out a few more things. From what I understand, the YouTube exception, the user-generated content exception to this was largely to deal with the mashups and to allow certain pieces of songs to be included along with other songs. It wasn't necessarily how long that song was or how long that clip was, but it was essentially my understanding of why the UGC exemption was put in place.

I'm just putting that out there because where I want to get your thoughts, Mr. Long, is that YouTube now—or I guess we should just say Google—is talking about doing, essentially, an Apple Music or Spotify version here in Canada. I think YouTube Remix is what we're talking about. From my understanding, it's coming on board this year, or the intent is to come on board this year. It's in other jurisdictions. Does this help satisfy a lot of this? Will that mitigate some of your concerns?

Mr. Scott Long: Potentially, but nonetheless I don't think the YouTube format, as it exists today, is going anywhere. That's where people go first to consume music for free.

Mr. Matt Jeneroux: Okay. Does something then come in to replace it? Is that what you're worried about, coming in to replace the free service?

Mr. Scott Long: No. We—

Mr. Matt Jeneroux: I guess what I'm getting at is whether people are looking for that. Are Canadians looking for that free service? There are definitely benefits for Apple Music and Spotify; they've made that a service that people will use because it has its benefits. YouTube eats up my data if I'm streaming something, so I try not to use YouTube as much as I would download something from Apple Music.

Mr. Scott Long: Can you just back that up for a second and make your point again?

Mr. Matt Jeneroux: Yes. What I'm trying to get to is this. Is there a value-add for Spotify and Apple Music?

Mr. Scott Long: Okay, so the point of contention here is that a service like YouTube, where people don't have to pay anything to consume music that may or may not be paid for properly, or licensed properly, or whatever, is that it's advertising. The business model is based on advertising, and those dollars aren't being distributed fairly to the content creators.

Why is it that in Canada, with threshold broadcasters, there's an onus and legal commitment that they must abide by to reinvest advertising profits back into royalty payments, Canadian content development payments, and so on for their use and commercial exploitation of intellectual property, yet these digital companies are immune to it?

Mr. Matt Jeneroux: With the Copyright Act, the UGC exemption is for that purpose. Am I correct in saying that the intent and the understanding of the UGC exemption was for mashups?

Mr. Scott Long: Yes, sure, that was one intent, but the provisions have been exploited.

Mr. Matt Jeneroux: People are taking advantage of that.

Mr. Scott Long: Yes.

Mr. Matt Jeneroux: Okay.

I do want to take some time to talk to you, Mr. Lorimer, getting some more information from you on what Canadian Publishers Hosted Software Solutions does. I'm curious. Which universities and post-secondary institutions are using CPHSS as a platform?

Mr. James Lorimer: We're launching it as a product at the congress of the learned societies in Regina at the end of the month. It's a soft launch. Right now if you looked at the site you'd see that there are about 3,500 chapters there from about 350 different books, but we're rapidly adding content from other publishers. We're expecting to have 600 books by the end of June, and we're continuing to add content.

Between February 1 and now, we've been funded by the Ontario Media Development Corporation and Nova Scotia's creative industries fund to undertake this project. I think everybody sees that there's an issue around lack of payment for the content that's being published in Canada by Canadian academic authors for the Canadian university market, and people are anxious to see whether there's—as I said in my presentation—a middle ground.

We went and talked to universities. We approached 35 universities. Two of the universities said they would actually tell their academics that this site exists. Those two were the University of Winnipeg and the University of Toronto; but 17 of the universities refused to talk to us.

● (1640)

Mr. Matt Jeneroux: What was their reasoning? Why?

Mr. James Lorimer: They were not interested. They said they were happy with what they're doing right now. Well, of course the universities are happy, as you heard earlier today and you've heard at other sessions. They're happy because they're not paying for the content, so they're happy. It's policy at universities about how academics are required to put together their course packs.

Anyway, we're hoping, of course, that as universities become more clear about what this offering is, they're going to see that this is a better alternative than what they're doing right now. We're not getting the warm response we were hoping for.

Mr. Matt Jeneroux: Do you guys set the price, then, of what the cost of the service would be?

Mr. James Lorimer: The individual publishers put the price on each chapter of each book, just as would be the case that, when I publish a book, I put the price on it. What we've tried to do is make sure that the prices are reasonable, as I said in my presentation. The average price is 10¢ a page. Some publishers' prices are a little bit more than that; some a little bit less.

Still, the point is that the whole argument for the 10% exemption was that it's not reasonable to ask people to buy a $25 book in order to have access to one chapter of that book. Effectively, by putting that chapter on the market at a reasonable price, we think we're making it impossible to use the fair use exemption. If you can buy it for a reasonable price, how can you take it for free? How is that fair?

Mr. Matt Jeneroux: Do the publishers help set the price with you?

Mr. James Lorimer: They set the price.

Mr. Matt Jeneroux: Each publisher would come to you and say, "I want this price."

Mr. James Lorimer: Yes, because it's a platform. Just like on Amazon, the price you pay is the price I charge Amazon less whatever the discount is they want to give you. Yes, each publisher sets the price of the book and the chapters in that book.

The Chair: Thank you very much.

We're going to move to Mr. Masse. You have seven minutes.

Mr. Brian Masse: Thank you for being here.

Mr. Lorimer, obviously there must have been considerable consensus to help create the motivation for the website you now have and the process. How long ago did that begin? Can you give us a little background on that?

I did go to your site, but regardless of the situation, it's obvious it's a response to something, and it has extensive contributors. Perhaps you can tell us the genesis of that. I'd be curious as to what brought about the unification to create that.

Mr. James Lorimer: As you have heard from other witnesses, my company and pretty well every Canadian publisher that publishes academic books found that after the universities decided to use the 10% for free approach, the revenues that we were getting from the university market for the use of our chapters in course packs went down very rapidly. Somebody today was quoting Stats Canada numbers saying that revenues from Access Copyright were down by 1%. When Terrilee Bulger said that her firm's experience was a dramatic—she said 10 times, it went from $30 to $3,000 in revenue—my own experience isn't that dramatic.

In my Toronto company, our revenues went from about $40 to about $10. It was across the Canadian publishing community. Our revenues from university use did decline substantially as soon as the Copyright Act was in place and the universities decided to interpret the fair use thing to say that they could take stuff for free for 10% and not pay Access Copyright. That took place in 2012, 2013, 2014. You could see the numbers coming down. At the Frankfurt book fair in 2015, a group of us were talking about the fact that there was this obvious problem but there was also a need for university professors to have better digital access to the books that we're publishing and to be able to find out about what kind of content there is in the books that we're publishing. This platform is not just a way of selling, it's also a way for university professors to find books and find material that they don't know exists and that they can use in their courses. The reason it's taken us three years to put it together has a lot to do with developing the software that makes that possible, because we couldn't find any software in the world that supported this particular approach to making books available digitally on a platform where lots of books were aggregated together but where they could be searched at the chapter level. I don't want to get into—

● (1645)

Mr. Brian Masse: No, it is technical. I did go on your site. You can only go so far without registering.

Mr. James Lorimer: You should register. It's free.

Mr. Brian Masse: I was listening to your testimony at the same time, but yes, I will. I thought it was interesting. My background is sociology, history, and I have a PSW. What I thought was interesting was the broad range of ways you could see what students in British Columbia were taking from Ontario or so forth. It probably could benefit from even a Canadian publishers and authors type of a system in the future.

I'm going to move to you, Ms. Bear Nicholas, with regard to your situation. We don't have very many witnesses who are begging for a lawsuit to take place. Maybe you should give us an update. How is it the Copyright Act failing you so poorly right now that this seems to be your best recourse for your situation? I think that's telling in itself. I happen to be one of the few non-lawyer politicians.

Prof. Andrea Bear Nicholas: Nothing has really changed in the sense that we're going to keep publishing and we're working on a second book right now, which is mostly done. We are hoping that copyright laws will be beneficial to us down the road and that we will not have to surrender copyright simply because these elders don't understand what this academic is doing when they're taping them. That's really the problem. By the time I got into the picture, most of the elders who had told these stories had passed away, so we couldn't even ask how they were.... We're talking 40 or 45 years ago in some cases, the early ones. Now, the situation as far as we know has not changed at all and we expect that the family could get their act together and decide to come after us. We published one book already and, as I said, we've probably got another 10 books to go, easily.

Mr. Brian Masse: The challenge we're hearing right now—we've heard this from university professors, universities and others—is there seems to be a consensus that aboriginal and native content has been taken advantage of for far too long, but nobody quite understands how we create a system for compensation in recognition that deals with the fact that the law is so rigid in terms of that.

Do you have any thoughts about what the next step is? There seems to be broad-based recognition that the status quo is simply untenable and there's no justice in it, but nobody seems to really know what to do about that under the current Copyright Act.

Prof. Andrea Bear Nicholas: I think basically, our storytellers shouldn't lose any claim to the stories. That's the most fundamental issue here, which is what we are still struggling against.

We haven't thought ahead in terms of compensation for our stories, except for the fact that we know that if we were to publish our stories, there would be money coming in for that work. We view our stories as kind of collectively owned. Under the current system, that's a little bit of a different way of looking at things, but certainly a community ought to be able to say, "These are our stories, and if money is to be made off those stories, that that should come to us." I think it's quite simple in that sense. I'm not a lawyer, and I'm not very up on how the copyright law works for others, but we know it hasn't worked for us.

● (1650)

Mr. Brian Masse: Exactly. It's a question of how to get to that solution.

Thank you, Mr. Chair.

The Chair: We'll move on to Mr. Jowhari. You have seven minutes.

Mr. Majid Jowhari: Thank you, Mr. Chair.

Welcome, presenters. Thank you for sharing your insights with us.

I want to start with Mr. Lorimer. You talked about the middle ground. You specifically said that, had you had more time, you would have shared with us the responses from universities, and you briefly touched on it when one of my colleagues was asking you a question. Can you expand on your experience of course packages, 10¢ a page, sharing it with the university, and how well it was embraced by each university. I understand there is a coalition of five universities. Can you name those for us, or did I misunderstand?

Mr. James Lorimer: We're a group of five publishers: Between the Lines, which is a Toronto-based publishing company; Irwin Law, which is a small, independent law book publishing company in Toronto; Fernwood Publishing, which I mentioned, in Black Point and Winnipeg; my own company, Formac Publishing, in Halifax; and my company, Lorimer, in Toronto.

What I was reporting was that we hired a copyright officer liaison person who, with the help of Nova Scotia's creative industries fund, was able to travel across Canada. She asked for meetings with 35 different universities to talk to the copyright officers and to explain how the site works, and why it's an alternative to taking material for free. She also met with university bookstores to explain how the model that we're following is exactly what they already do with respect to books. So it was to reassure everybody that this is a reasonable way to get access to a wide range of published material at reasonable prices and in an easy way. I have the list here.

Mr. Majid Jowhari: We have Dalhousie here, and we had UNB before. Did you specifically talk to them, and what was their response?

Mr. James Lorimer: Yes. The response from Dalhousie was that they weren't interested in meeting with us about this initiative. We didn't go to Fredericton. In Halifax, we did meet with Mount Saint Vincent, , and we did meet with Acadia, which is in Wolfville, but we were declined by the other three.

Mr. Majid Jowhari: Fair enough.

Where do the creators of the content fit into the middle ground? You talked about the publishers. You talked about the universities. You talked about these course packs. I get it.

Why would the middle ground only include the publishers and the universities but not the content creators, and how is that helping the content creators, especially Canadian content creators?

Mr. James Lorimer: The way it works is that when an author comes to me and I publish his book, my job is to get that book out into as many people's hands as possible, to promote the book, and to create awareness. When I sell the book, I pay royalties to the author. All of the publishing companies operate in the same way, so in this case, if I sell a copy of a book to you, revenue flows back to the author in the form of royalties.

Mr. Majid Jowhari: Do you believe that this middle ground will increase the revenue flowing back to the content creator?

Mr. James Lorimer: Oh, yes, absolutely.

Mr. Majid Jowhari: Thank you.

Mr. Long, I want to go back to your second recommendation, which was to repeal section 68.1 and the $1.25 million radio royalty revenue.

If I understood you correctly, and you can correct me if I did not understand you correctly, you are saying the majority of the smaller players have been bought by the larger players. The larger players are benefiting from this, and the small players are not benefiting from it, therefore this is not fairly distributed.

By repealing that, what happens to some of the small operators in a remote and rural area, that aren't part of that large corporation?

● (1655)

Mr. Scott Long: I guess subsection 68.1, as it is written now, was meant to protect some of those small, rural stations at the time, the mom-and-pop shop radio stations, obviously.

Mr. Majid Jowhari: I have one in my riding and they're not making $1.25 million, I can assure you.

Mr. Scott Long: Exactly.

Mr. Majid Jowhari: They're not part of a big corporation so how would you—

Mr. Scott Long: No, but the recommendation we're making is that it would be scalable and ability to pay would be taken into consideration.

Mr. Majid Jowhari: So it's not a complete repeal, it's scalable.

Can you give me your thoughts on the—

Mr. Scott Long: It would need to be negotiated, whether it's the Copyright Board...and with rights holders. I don't want to say what those rates should be.

A complete repeal would be the wrong use of language, as you pointed out, but we're definitely sympathetic to the small, independent-owned radio stations and believe concessions should be made so they would not be negatively affected.

Mr. Majid Jowhari: When a song is produced, can you educate me in the process? I know there are songwriters, and the people who write the lyrics. If it's a five-stage process, where is most of the cost incurred, and where is most of the revenue going?

Mr. Scott Long: If we start with revenue, I suppose the songwriting royalty in itself is probably the most lucrative, so whoever wrote the song.... Then their publisher would be the first mainstream in royalty. After that there are performance royalties or neighbouring rights as well. Those are royalties that would be due to people performing the music but who didn't compose it. Then there would be live touring. Probably now in the digital age, live-playing revenue is the most important source of revenue and probably the largest, especially for independent artists, because revenues from recording royalties, streaming, and physical sales are so low.

Mr. Majid Jowhari: Thank you.

The Chair: We're going to move to Mr. Lloyd. You have five minutes.

Mr. Dane Lloyd: Thank you, Mr. Chair.

Madam Nicholas, I want to thank you for your moving testimony. It had an impact on me.

If the roles were reversed, and your community were protected by the Copyright Act instead of being victimized by it, would you view someone using your stories without consent or permission as an act of colonialism?

Prof. Andrea Bear Nicholas: Of course.

Mr. Dane Lloyd: Would that be consistent with your view of the recommendations of the Truth and Reconciliation Commission, that it would be inconsistent for aboriginal, indigenous stories to be used without consent and permission, as going against the Truth and Reconciliation Commission?

Prof. Andrea Bear Nicholas: That would be consistent, yes.

Mr. Dane Lloyd: Thank you.

This is going to get into a more technical question. I realize that you say you're not a lawyer or copyright expert, but if we were to recommend the creation of some sort of collective copyright ownership policy in the case of, let's say, an individual from your community who wrote an original story based on their experiences, but drawing from the community experiences, do you think that would be acceptable or would your community desire to seek a collective copyright and seek compensation from an individual from your community publishing stories and making some money off them?

Prof. Andrea Bear Nicholas: There could be several ways of dealing with this in a community. It could be a joint copyright, depending on the content of the story. If it's largely the intellectual content of the individual, I don't think the community would argue and say they have some claim to that story. But if it's a traditional story that has just been reworked in some way, or reworked totally, the individual might lay claim to it.

We have been videotaping in our community, and we have worked out that kind of agreement, where the stories would be jointly.... The storyteller, but the community also, would have some claim to that story for purposes of giving permission, let's say, down the road for others to use it. We're not talking heavily about money or proceeds from these works; we're talking about not losing control over these stories. I think that's the biggest issue we've had to deal with.

● (1700)

Mr. Dane Lloyd: Thank you. I appreciate your answers.

Mr. Long, I realize you've been put a bit on the hot seat here with all the Music Canada stuff.

I take in your concerns. I have independent radio stations in my riding that certainly aren't directly affiliated with the larger players. Would you view, in the exemption for the first $1.25 million, which is...? I believe you said you pay about $100 on the first $1.25 million, and then after that you would pay a more agreeable amount. Obviously, this was made back in the nineties, when it was first set. Rather than creating a new litigious process, where there's a negotiation and the biggest beneficiaries will be the lawyers, would you view it as a possible recommendation to raise that limit from $100 to something larger to take into a pact? Could there be an amount that would be an acceptable compensation for the producers?

Mr. Scott Long: Potentially, yes. I'm sure that if any effort were made to review this and to look at change—and again, change that will be beneficial for all and not harm the small local independent stations, although they are still using licensed intellectual property to sell advertising.... But yes, any effort to fix that, I would say, we and people in the Canadian music industry would be open to.

Mr. Dane Lloyd: I apologize, Mr. Westwood. We dealt with a lot of your stuff in the previous panel.

Mr. Lorimer, I think the proposal you brought here is very interesting. To me, it looks as if you're almost proposing a Netflix or a Spotify, but for the academic world. Would you agree with that characterization?

Mr. James Lorimer: We're definitely aiming to be a platform.

As I said earlier, we think that the opportunity for discovering content.... It's very hard for an academic to keep on top of, especially when there is material in books that they wouldn't necessarily see as hitting right on the head of their discipline. There's other material out there.

A good example is that if you look across our platform for material that has to do with policing and the impact on aboriginal people and on black Canadians, you will find material popping up and interesting discussions across multiple different fields: law, sociology, social work, economics, and politics. It's surprising.

Yes, getting revenue—that is important in this kind of publishing—is one of our objectives. But another objective....

Our real objective isn't to get rich. We wouldn't have gone into book publishing if we were doing that.

Mr. Dane Lloyd: Especially as a non-profit, as you had claimed earlier.

Mr. James Lorimer: Behind the non-profits are the publishing companies. The money flows through the publishing companies. It's more that we want to get this material.

We publish it because we think it's important for people to read, and that's what this would achieve, making the material much more available and accessible and easier to use in courses so people could build more relevant, more up-to-date material for their students than they're able to get from standard textbooks.

Mr. Dane Lloyd: Would your group consider a subscription fee where you can have access to unlimited content, but you pay an upfront monthly rate?

Mr. James Lorimer: Of course, that's what Access Copyright does. That's the Access tariff approach to life. I think you have heard enough to know that there's a huge resistance on the part of the universities to paying fees when they don't see the direct connection. First of all, they don't want to pay fees at all, but if they do have to pay, they really resist that.

● (1705)

Mr. Dane Lloyd: I realize you have a unique proposition here, but what would you say is the greatest distinction between your proposal and Access Copyright's proposal?

Mr. James Lorimer: Pay to play is our thing, and the money is staying in Canada, going to Canadian publishers of Canadian material. If you were to get good information, which is tough to get—I'm not even sure you would get it from Access—about what was happening with the money universities were paying under the Access tariff, I think you would be surprised at the distribution of that money between staying in Canada and going elsewhere.

Mr. Dane Lloyd: Thank you.

The Chair: We're going to move to Ms. Ng. You have five minutes.

Ms. Mary Ng: Thank you, everybody, for joining us today.

I would like to spend my time asking you questions, Ms. Nicholas. Thank you for your testimony.

I would like to use this as a bit of an opportunity for you to help me learn a little bit. If I understand correctly, there is storytelling by the elders and by others in the community that has taken place. At present, those stories are told, and a couple of things happen. You don't have the right, or the community does not have the right, to publish that because you don't have the rights to them after the story has been told.

Am I understanding that part correctly?

Prof. Andrea Bear Nicholas: We don't have rights because somebody not of our community taped those stories.

Ms. Mary Ng: The rights have now turned to the individual or whoever it is who taped it and no longer belong to the person who is the content creator, the knowledge creator.

Prof. Andrea Bear Nicholas: Right.

Ms. Mary Ng: As we're studying the Copyright Act, I want to reference another piece of work the government is doing.

This was announced by our justice minister, the Hon. Jody Wilson-Raybould, and the Prime Minister on the creation of a working group of ministers that is reviewing the laws and policies related to indigenous people. The objective of this is to look at the colonial laws that exist and their impact on indigenous people in our country, to make sure we are going to be able to implement the recommendations coming out of the Truth and Reconciliation Commission and be respectful to the UN declaration, etc.

Can you help us understand? Share with us the very barriers that actually exist right now, so we get to look at it as a committee in consideration of our recommendations, because we know this other working group is doing something different but connected.

Help me understand that, or talk to us about that, please.

Prof. Andrea Bear Nicholas: I'm almost wanting to turn the question around and ask what you know is being discussed by this other committee in terms of copyright issues. We don't hear any of that, right? Whether you do, I'm not sure.

Ms. Mary Ng: No.

Prof. Andrea Bear Nicholas: The problem for us is that it could happen that the copyright law doesn't get changed, so our barrier would still be the same. In order to publish these stories, we might end up having to go to court if we are sued for infringing the claimed copyright of the collector.

Ms. Mary Ng: Right. I'm trying to look at it from an understanding of what the issues are. I don't know what the group is studying. It has a broad framework, but for sure this committee is studying the Copyright Act. Clearly, the Copyright Act in its current form has an impact on our indigenous people.

I'm trying to understand the various forms in which it has that impact. One is the right belonging to the content creator, and it being taken away.

Can you give me other examples and help us understand a bit better?

Prof. Andrea Bear Nicholas: I've been so immersed in this struggle that I don't know a lot of other examples, but I do know that there have been other cases.

There was a case I'd heard of some years ago in B.C. where a similar experience was had by the first nations community. I'm not sure if it was *Daughters of Copper Woman*, that collection of stories. All I know is that others have been dealing with the same problem and trying to stand up and fight it, but as far as I know nobody has really.... Perhaps your committee has heard from some of these communities where this has happened.

I guess I would be interested to know if others have come forward. I do know that Listuguj, a Mi'kmaq community in Quebec, also had some of their stories taken by others and published, as far as I know from grumblings from those communities.

I think it's basically the same story, where stories are being picked up.

● (1710)

Ms. Mary Ng: You talked about essentially 60 lifelong speakers now of Maliseet, from more than 7,000, I think, was what you said. You said there are a lot of stories already in there that you would love to be able to tell. This goes to the preservation and the future flourishment of the indigenous language and culture.

This is getting in the way because no one wants to do that at this particular juncture. Why do it if there is really no protection for it? Am I understanding correctly?

Prof. Andrea Bear Nicholas: Yes.

I'd say, too, that the families did not want to just simply retell the stories that were told on the tapes. In that way, they could have had the copyright to themselves, or we could have worked it so that we could have claimed copyright, or at least claim that they were still our stories. The families really felt very strongly that the words of their elders were important.

Our language has declined so in the last 45 to 50 years. We've had the grandchildren of some of the storytellers working with linguists on transcribing these tapes, and they are shocked at the number of words that are no longer known, even by the linguists or the dictionaries that are out there. There's that little and very important element of the language that is within these exact tapes. That's why we feel the whole prevention of our people from being able to make copies and give them out to students in class, or to even be able to play them in class, which is what we were warned against, is really sad. I guess that's the barrier, really.

Ms. Mary Ng: It seems to me that if we can try to crack this a bit, then it is one step further toward that reconciliation.

Prof. Andrea Bear Nicholas: I would say that perhaps the storytellers need to be treated as performers as well.

Ms. Mary Ng: Good. Thank you so much.

The Chair: We're going to move to Mr. Jeneroux. You have five minutes.

Mr. Matt Jeneroux: Thank you, Mr. Chair.

Mr. Long, I'll go back to you briefly. The life plus 70 years, is that working for you? Is your membership happy with that?

Mr. Scott Long: I think so. I was actually curious. Was it you who said life plus 50 years? Is there a difference?

Mr. Matt Jeneroux: Yes, it's 20 years.

Mr. Scott Long: Yes, I didn't know. I assumed that life plus 70 would go across all industries.

Mr. Matt Jeneroux: No, it was only put in with respect to the music industry.

Mr. Scott Long: I guess I'd have to say that we're happy because we have 20 more years than these folks do.

Mr. Matt Jeneroux: Perfect.

That gets to my other question. Mr. Westwood, let's get you commenting on some stuff here. You said you were happy with the life plus 50 years. Is life plus 70 years something your faculty association would be advocating for?

Mr. David Westwood: No, I think we're happy with life plus 50, at least in our industry. I also was not aware that there was a difference between music and education.

From our standpoint, we find life plus 50 preserves the balance of enabling royalties to flow to the families of the people who've passed on, but it keeps the material current enough that it's relevant from an education standpoint. We're in favour of maintaining life plus 50.

Mr. Matt Jeneroux: If it were consistent across the board as 70 years, would you still be okay with it?

Mr. David Westwood: I'm not sure what you mean by "across the board". Do you mean equalizing across—

Mr. Matt Jeneroux: Yes. So if everybody was life plus 70.

Mr. David Westwood: I'd have to hear the arguments for and against. I don't know why, actually, there's a difference. Do you know?

Mr. Matt Jeneroux: A member of your association would publish in a journal. Let's say a student, or maybe somebody's who's very interested in their work across the country, emails that member of the faculty, a professor, and says, I love your position on these things. I don't subscribe to this particular publication. Would you email that to me for me to review? Is that happening? Are people saying, no, you have to go through the proper channels of subscribing to the publication. If you're at work, you submit to the publication and pay for the publication. I'm trying to get a sense of how that world operates.

● (1715)

Mr. David Westwood: You used the example of a student approaching us, a student at an institution, looking to move from, say, a bachelor's to a graduate-level program, and if they're a student at a university, presumably through their own institution they would have access. Personally, my bias has always been to provide the citation and say, look up some of my work. You can find it through your library most likely. Exchanging PDFs, for example, I'm sure people do it. I don't think it's good practice. I don't think it comes up, because, as I say, most people who approach us are already students somewhere.

Mr. Matt Jeneroux: So there hasn't been a complaint from your association saying, too many people are emailing us to get this for free when they should be paying for it?

Mr. David Westwood: No. As I mentioned, the big concern we've heard is students sharing lecture notes and things online. That's become the one thing that's come to our attention over the past couple of months.

Mr. Matt Jeneroux: Okay.

Mr. Lorimer, could you chat a little bit about the TPMs and digital locks, and your opinion on that? Mr. Westwood shared some of his opinions. If you did, I apologize, I didn't catch it. Where do we sit with regard to the WIPO agreement and the Berne convention? How would you reconcile some of that with your association?

Mr. James Lorimer: All of the publishers involved in this project are members of the various regional and national publishing associations. The project that we're working on is like its own specific project. We're not, let's say, a policy.... Not all of us agree, by the way, with all the positions the publishing associations take. I think there is much greater diversity of opinion than you might have been exposed to amongst publishers about the issues around copyright, and Access Copyright and so on.

As far as digital locks are concerned, we've run into the issue that was mentioned earlier today about disabled students needing to get access to files and needing to do things with files in order to make them available. Really, our fundamental objective is to get people to use and read our material. We're not like the multinationals, whose job it is to extract as many millions of dollars from every national territory they can. We're publishers like real publishers used to be, which is we want people to read our material, not to turn this into an MBA, a way of getting as much money out of every market that you can possibly get.

Mr. Matt Jeneroux: Thank you.

The Chair: Mr. Jowhari, you have five minutes.

Mr. Majid Jowhari: Mr. Westwood, I have two questions. First, a quick one, I want to get your opinion of the middle-ground concept that was suggested by Mr. Lorimer, and then I want to talk about the crown copyright that you started talking about.

Can you give me your response and your thoughts on the middle-ground concept that was tabled today?

Mr. David Westwood: I thought it was very interesting. I think innovation is key in moving forward, and in all areas of academia. When you described it, it struck me as odd that this was new. I assumed there were already options like that available, so that was good to hear. It does seem like something—

● (1720)

Mr. Majid Jowhari: It's fair for Mr. Lorimer to drop by and have a chat with you later on, correct?

Mr. David Westwood: Well, I was wondering if you were going to ask me—

Mr. Majid Jowhari: I just want to make sure. As a committee we're trying to help. I just wanted to open that door.

Mr. Lorimer, now you have an open invitation.

Mr. David Westwood: I should have clarified that as a faculty association, you wouldn't have approached us to talk about something like that. As academics, what we want to do is ensure that students are exposed to materials that will help them learn. In the notion of fair dealing, as we said, the key there was to strike a balance so that education can continue and the people who produce content are compensated, in a balanced manner. This idea of custom course packs, I think, is an interesting concept.

Mr. Majid Jowhari: Let's go to crown copyright. You touched on that. As the crown, there is a lot of research being done, especially with the $4-billion investment that we made in the 2018 budget for doing research and building infrastructure. What are your thoughts? How can we benefit from those? How does copyright fit into all of the research and publications being generated?

Mr. David Westwood: It's an interesting question. As I said, many of my speaking notes on that point come to me from CAUT, national level. Their framing of the issue is that works that have already been funded through public dollars ought to be made available to the public that paid for them.

It goes hand in hand, in a way, with muzzling of federal scientists. The idea of open government, open access, open data, I think, is the inspiration for that idea. The public should have access to the works that they helped fund.

Mr. Majid Jowhari: You're saying if it's anything that's generated by the crown, it should be open to the public.

Mr. David Westwood: Yes, that would be the idea.

Mr. Majid Jowhari: Canada also makes investments in universities by enabling the professors and the research councils, etc., to create different publications, yet for those we go through the publishing houses. Help me understand the difference between the two.

Mr. David Westwood: I'd like to know the difference as well, because that issue often comes up. Many of the federal funding agencies now insist on open access publishing as a contingency of funding. I am being funded by NSERC, the Natural Sciences and Engineering Research Council, with the stipulation that I use funds from the grant to help defray the cost of publishing and make it openly accessible for that very reason. This is an issue that will have to be considered.

Mr. Majid Jowhari: Do you have a final thought on open access?

Mr. David Westwood: In principle, I'm very much in favour, and I think most academics would be. Most of us are not interested in hiding and profiting from our work. As you say, we're already paid a good salary. We want to get our work out in the hands of people who can use it. I think that's really the motivation, that cost doesn't become a barrier, from an equity standpoint, to people getting access to the research they need to improve their lives.

Mr. Majid Jowhari: Thank you.

The Chair: For the last round of questions, Mr. Masse.

Mr. Brian Masse: Thank you, Mr. Chair.

I was just doing a little work here regarding YouTube and whether other countries seem to be going on with artistic communities as well. Mr. Long, just in reading some articles from the U.K., Australia, and a couple of other spots, there seem to be love–hate relationships going on with it.

Even if Canada comes up with something, do we need an international agreement on this?

Mr. Scott Long: This issue is macro. It's worldwide. It's going to require international co-operation. Europe seems to be more on the cutting edge of this and leading the way, so I think Canada needs to look at what's happening in the European Union as well.

Mr. Brian Masse: This almost follows, in some ways, a trade agreement, with intellectual property, and sharing, and so forth.

Here's the thing, though. The argument is that it's a platform for sharing so you can expect to use it to grow your potential base. Is it just the base fact, which seems to be consistent with what I've just seen, that the royalty level or compensation has grown so little compared to its overall value? Is that really what's up? It hasn't kept pace, from the perspective of artists, to be anywhere near reasonable in terms of the original agreement, the expectations on signing up, and the use of material versus the net return and the wealth that's being generated.

● (1725)

Mr. Scott Long: Absolutely, you're just describing what the value gap is essentially. You talk about the love-hate relationship as well. There's a saying in the music industry now that you could die of exposure. You need to have it up there. You need to have your music up on YouTube. You need to have your music playing on all the streaming services. Although you're not getting much pay for it, you're getting all this exposure. That's wearing thin for artists.

Mr. Brian Masse: Yes, if there's zero compensation coming back, it doesn't matter how popular you are. The reality is that you can't carry on. It just seems that the balance has been struck there.

That's all the questions I have, Mr. Chair.

The Chair: Well, then, that brings us to the end of our second panel. I want to thank everybody for coming today and contributing to this conversation on copyright.

We will adjourn for the day. We will be back at 7 p.m. for our open microphone.

Thank you to all our panellists and to all our watchers out there and at the back of the room.

Published under the authority of the Speaker of the House of Commons

SPEAKER'S PERMISSION

The proceedings of the House of Commons and its Committees are hereby made available to provide greater public access. The parliamentary privilege of the House of Commons to control the publication and broadcast of the proceedings of the House of Commons and its Committees is nonetheless reserved. All copyrights therein are also reserved.

Reproduction of the proceedings of the House of Commons and its Committees, in whole or in part and in any medium, is hereby permitted provided that the reproduction is accurate and is not presented as official. This permission does not extend to reproduction, distribution or use for commercial purpose of financial gain. Reproduction or use outside this permission or without authorization may be treated as copyright infringement in accordance with the *Copyright Act*. Authorization may be obtained on written application to the Office of the Speaker of the House of Commons.

Reproduction in accordance with this permission does not constitute publication under the authority of the House of Commons. The absolute privilege that applies to the proceedings of the House of Commons does not extend to these permitted reproductions. Where a reproduction includes briefs to a Committee of the House of Commons, authorization for reproduction may be required from the authors in accordance with the *Copyright Act*.

Nothing in this permission abrogates or derogates from the privileges, powers, immunities and rights of the House of Commons and its Committees. For greater certainty, this permission does not affect the prohibition against impeaching or questioning the proceedings of the House of Commons in courts or otherwise. The House of Commons retains the right and privilege to find users in contempt of Parliament if a reproduction or use is not in accordance with this permission.

Also available on the House of Commons website at the following address: http://www.ourcommons.ca

Publié en conformité de l'autorité du Président de la Chambre des communes

PERMISSION DU PRÉSIDENT

Les délibérations de la Chambre des communes et de ses comités sont mises à la disposition du public pour mieux le renseigner. La Chambre conserve néanmoins son privilège parlementaire de contrôler la publication et la diffusion des délibérations et elle possède tous les droits d'auteur sur celles-ci.

Il est permis de reproduire les délibérations de la Chambre et de ses comités, en tout ou en partie, sur n'importe quel support, pourvu que la reproduction soit exacte et qu'elle ne soit pas présentée comme version officielle. Il n'est toutefois pas permis de reproduire, de distribuer ou d'utiliser les délibérations à des fins commerciales visant la réalisation d'un profit financier. Toute reproduction ou utilisation non permise ou non formellement autorisée peut être considérée comme une violation du droit d'auteur aux termes de la *Loi sur le droit d'auteur*. Une autorisation formelle peut être obtenue sur présentation d'une demande écrite au Bureau du Président de la Chambre.

La reproduction conforme à la présente permission ne constitue pas une publication sous l'autorité de la Chambre. Le privilège absolu qui s'applique aux délibérations de la Chambre ne s'étend pas aux reproductions permises. Lorsqu'une reproduction comprend des mémoires présentés à un comité de la Chambre, il peut être nécessaire d'obtenir de leurs auteurs l'autorisation de les reproduire, conformément à la *Loi sur le droit d'auteur*.

La présente permission ne porte pas atteinte aux privilèges, pouvoirs, immunités et droits de la Chambre et de ses comités. Il est entendu que cette permission ne touche pas l'interdiction de contester ou de mettre en cause les délibérations de la Chambre devant les tribunaux ou autrement. La Chambre conserve le droit et le privilège de déclarer l'utilisateur coupable d'outrage au Parlement lorsque la reproduction ou l'utilisation n'est pas conforme à la présente permission.

Aussi disponible sur le site Web de la Chambre des communes à l'adresse suivante : http://www.noscommunes.ca